

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA

HEARING #10681

MARCH 31, 2005

10:30 A.M.

COPY

DOCKET NO. 2004-280-C: TIME WARNER CABLE INFORMATION SERVICES (SOUTH CAROLIN), LLC, DBA TIME WARNER CABLE — *Application to Amend Certificate of Public Convenience and Necessity Granted to it under Commission Order No. 2004-213.*

HEARING BEFORE: Randy MITCHELL, CHAIRMAN, G. O'Neal HAMILTON, VICE CHAIRMAN; and COMMISSIONERS John E. "Butch" HOWARD, Elizabeth B. "Lib" FLEMING, Mignon L. CLYBURN, and C. Robert MOSELEY.

Chief Counsel: Joseph Melchers, Esq.

STAFF: James B. Spearman, Ph.D., Douglas Pratt, MaryJane Cooper, Court Reporter, and Dale Davis and Hope H. Adams, Hearing Room Assistants.

APPEARANCES: Frank R. Ellerbe III, Esq., and Bonnie D. Shealy, Esq., representing TIME WARNER CABLE INFORMATION SERVICES, LLC, Applicant.

M. John Bowen, Jr., Esq., and Margaret M. Fox, Esq., representing FARMERS TELEPHONE COOPERATIVE, INC., FORT MILL TELEPHONE COMPANY D/B/A COMPORIUM COMMUNICATIONS, INC., HOME TELEPHONE COMPANY, INC., PBT TELECOM, INC., ST. STEPHEN TELEPHONE COMPANY, AND SOUTH CAROLINA TELEPHONE COALITION, Intervenor.

Benjamin P. Mustian, Esq., representing, the Office of Regulatory Staff.

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

VOLUME 1 of 1

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1 CHAIRMAN MITCHELL: Thank you. Be
2 seated please. I'll call this hearing to
3 order at this time, and I'll ask Mr.
4 Pratt if he'd have the reading of the
5 Docket for us.

6 MR. PRATT: Mr. Chairman, Members of
7 the Commission, this matter comes before
8 the Commission by way of Docket No. 2004-
9 280-C regarding the request of Time Warner
10 Cable Information Services South Carolina
11 LLC, d/b/a Time Warner Cable, to amend the
12 Certificate of Public Convenience and
13 Necessity granted to it under Commission
14 Order No. 2004-213. Time Warner Cable
15 desires to expand its operating authority
16 so as to provide interexchange and local
17 voice telecommunications services within
18 the service areas of incumbent local
19 exchange carriers, Farmers Telephone
20 Cooperative, Inc., Fort Mill Telephone
21 Company d/b/a Comporium Communications,
22 Inc., Home Telephone Company, Inc., PBT
23 Telecom, Inc., and the St. Stephen
24 Telephone Company. These telephone
25 companies currently have a rural exemption

1 as defined under 47 U.S.C. § 251(f)(1).

2 A hearing on this matter has been
3 scheduled for 10:30 A.M. on March 31,
4 2005, in the Commission Offices at 101
5 Executive Center Drive, Columbia, South
6 Carolina 29210.

7 Mr. Chairman and Members of the
8 Commission, the Docket is in order

9 CHAIRMAN MITCHELL: Thank you, sir.

10 Who represents the Applicant?

11 MR. ELLERBE: Mr. Chairman, my name is
12 Frank Ellerbe of the Robinson, McFadden
13 Firm and along with Bonnie Shealy, we're
14 representing the Applicant today.

15 CHAIRMAN MITCHELL: Thank you. Glad to
16 have you. Who represents the Intervenors
17 in this case?

18 MR. BOWEN: Mr. Chairman and Members
19 of the Commission, my name is John Bowen
20 and along with me is Peg Fox.

21 CHAIRMAN MITCHELL: Thank you very
22 much. Glad to have y'all. Who represents
23 the Office of Regulatory Staff?

24 MR. MUSTIAN: Thank you, Mr. Chairman.
25 My name is Ben Mustian. With me today is

1 Ms. Lessie Hammonds, and we represent the
2 Office of Regulatory Staff.

3 CHAIRMAN MITCHELL: Glad to have
4 y'all.

5 Do we have any matters that we need
6 to discuss prior to the hearing beginning
7 from anyone?

8 MR. ELLERBE: Mr. Chairman, I'd like
9 to make a brief opening statement to
10 clarify the purpose for my addressing you
11 now, to clarify exactly what we're asking
12 for. Before I do that, let me introduce -
13 y'all will meet Julie Patterson in just a
14 minute. She'll be testifying for us. I'd
15 also like to introduce you to Charlene
16 [inaudible]. Charlene is the Vice
17 President and General Manager of Digital
18 Phone for South Carolina for Time Warner
19 Cable. So, her office is about five
20 minutes from here, and she's responsible
21 for getting digital phone implemented in
22 the state of South Carolina.

23 OPENING STATEMENTS:

24 Mr. Ellerbe: This is a little bit of a tricky situation. The
25 reason I'm speaking to you is to try to clarify. Last

1 year, this Commission issued Order 2004-213 in Docket
2 2003-362-C and then another Order on reconsideration
3 clarifying an issue. That order was 2004-495 and in that
4 Order, this Commission granted, found that Time Warner
5 Cable was fit, willing and able and should be granted a
6 Certificate of Public Convenience and Necessity to offer
7 telephone services in the State of South Carolina. Our
8 service area under those orders was limited to certain
9 areas, and we were specifically — and it was pursuant to
10 a negotiated agreement with the Coalition Companies, we
11 agreed that the certification would not extend to the
12 territories of certain companies that still had their
13 rural exemption. That's why you heard Mr. Pratt make
14 reference to the rural exemption when he described the
15 Docket.

16 The reason I make a point of that is, we're asking
17 to extend our certification into those areas served by
18 those five companies, the rural ILECs. But, we're not
19 asking, it is not an issue before you today, as to
20 whether the rural exemption will continue or not. We're
21 not asking that the rural exemption be set aside. Those
22 companies have not invoked the rural exemption. The
23 process, we're at an earlier stage in the process, and we
24 may never get to the question of the rural exemption.
25 What we have to do, what we need to do is to get

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1 certified in these other areas. Only when we are
2 certified can we then propose Interconnection Agreements
3 to those companies. We then are under an obligation,
4 under the Federal statutory scheme, we're under an
5 obligation to attempt to negotiate Interconnection
6 Arrangements with these companies. But, we have to be
7 certified first. We can't make a proposal under the
8 statutory scheme until y'all have certified us.

9 So, all we're asking for today is to extend the
10 certification into this area. Y'all may see if those
11 negotiations don't result in an Interconnection
12 Agreement, and the rural companies invoke their rural
13 exemption, which they have not done yet, but if they do
14 so under the statutory scheme, then we may ask at that
15 time this Commission to set aside the rural exemption. We
16 may not have to. The interconnection arrangements that
17 Time Warner Cable needs, Time Warner Cable Information
18 Services, the Applicant, needs are not the same
19 interconnection arrangements that some other companies
20 need. For instance, we don't need unbundled network
21 elements, big issue. I don't want to get ahead of myself.
22 Y'all may never deal with that. What I'm telling you is,
23 we don't, we're not asking for any rural exemption to be
24 addressed today. We hope to never have to come before you
25 and fight about that. We hope we can negotiate

1 Interconnection Agreements. But, in order to do that,
2 we've got to be certified in these areas.

3 The other issue I'm clarifying, Ms. Patterson will
4 be speaking about this. It's in her testimony. It's in
5 the testimony of some of the Intervenor witnesses, is the
6 impact of the Vonage Order. Ms. Patterson will address
7 that more specifically. What I want to make clear, it is
8 our position, and we will put this on the record to make
9 it very clear, we will continue, Time Warner, the
10 Applicant, Time Warner Cable Information Services and any
11 Time Warner operations will continue to pay all monies
12 into the Universal Service Fund. We're not attempting to
13 get out of that. We're acknowledging that we're going to
14 continue to pay the money into the State Universal
15 Service Fund, Federal Universal Service Fund.

16 The other thing is we believe the Vonage Order,
17 preemption of the Vonage Order, does not have an effect
18 on this Commission's jurisdiction over interconnection
19 agreements. So, things like access charges and
20 intercarrier compensation issues that have been raised in
21 some of the testimony, we don't believe that the Vonage
22 Order has a preemptive effect on this Commission's
23 jurisdiction over that issue.

24 One reason we want to be certified is, we want to,
25 as I just explained, we want to be able to negotiate

1 Interconnection Agreements. We want to be able, if it
2 breaks down, to be able to come to this Commission and
3 ask for arbitration, and we recognize that that means
4 that someone having a complaint against us — you're not
5 paying the appropriate access charges or anything else —
6 will be able to come to this Commission and get this
7 Commission to deal with it. So, we want to make that
8 clear also.

9 What we think will end up, the way we see where we
10 end up in this, with respect to the FCC preemption as
11 described in the Vonage Order, is a little bit like the
12 impact of the Bundling Bill that the General Assembly
13 passed last year that the alternatively regulated
14 companies that operate, local exchange companies in South
15 Carolina offer bundled services, those are unregulated
16 and are not subject to this Commission's jurisdiction.
17 But, the companies themselves are still certified and
18 subject to the Commission's jurisdiction, and a lot of
19 other issues. We think that our retail offerings, the way
20 we read the Vonage Order, will be preempted and will not
21 be subject to the Commission regulation. But, we believe
22 that the Commission will have authority over this
23 Applicant, Time Warner Cable Information Services, and be
24 able to deal with all issues arising under any
25 intercarrier compensation regimes, including access

1 charges and other things.

2 Mr. Chairman, I appreciate the
3 opportunity to make a little opening
4 statement to try to clarify things.

5 CHAIRMAN MITCHELL: Thank you, sir.

6 Any response to that?

7 Mr. Bowen: Mr. Chairman and members of the Commission, Mr.
8 Ellerbe said that he wanted to get up and try to clarify
9 things. I would even offer an easier clarification. Let
10 them just withdraw their certificate. That way we can all
11 go home.

12 He talks about the fact that they're not going to
13 serve in our areas. If they're not serving in our areas
14 and not going to serve in our areas, why do they need a
15 certificate? So, I just think that he raises more
16 questions than he answers when he got up and made his
17 opening statement.

18 He talks about a deregulated entity, but yet they're
19 not deregulated until after they get the certificate.
20 There are a lot of issues in this case. I'm not trying to
21 make light of it, but I think there are a lot of issues
22 in this case that are confusing, at least confusing to
23 us, that I would hope that the Commission would pay
24 attention to.

25 We appreciate it very much. Thank you.

1 CHAIRMAN MITCHELL: Yes sir. Thank
2 you. Any response?
3 MR. MUSTIAN: No, Mr. Chairman. Thank
4 you.
5 CHAIRMAN MITCHELL: Yes, sir. Mr.
6 Ellerbe, we call on you, please.
7 MR. ELLERBE: Mr. Chairman, we call
8 Julie Patterson for testimony.
9 WHEREUPON, Julie Y. Patterson, first
10 being duly sworn, assumes the stand and
11 testifies as follows:
12 DIRECT EXAMINATION BY MR. ELLERBE:
13 Q Ms. Patterson, would you state your name for the record
14 please?
15 A My name is Julie Patterson.
16 Q Ms. Patterson, by whom are you employed and in what
17 capacity?
18 A I am Vice President and Chief Counsel for Telephony for
19 Time Warner Cable in Stamford, Connecticut.
20 Q Have you caused to be prepared eleven pages of prefiled
21 direct testimony that's been filed in this docket?
22 A Yes, I have.
23 Q Do you have any changes to that testimony this morning?
24 A No, I do not.
25 Q If I were to ask you the questions contained in your

1 direct testimony, would your answers be the same?

2 A Yes.

3 MR. ELLERBE: Mr. Chairman, we'd ask
4 that Ms. Patterson's direct testimony be
5 copied in the record as if given from the
6 stand.

7 CHAIRMAN MITCHELL: We'll do that, Mr.
8 Ellerbe. It will be incorporated into the
9 record as if given orally.

10

11 [PREFILED DIRECT TESTIMONY OF

12 JULIE Y. PATTERSON FOLLOWS]:

1 Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR THE
2 RECORD.

3 A. My name is Julie Y. Patterson and I am Vice President and Chief Counsel, Telephony for
4 Time Warner Cable. My business address is 290 Harbor Drive, Stamford, Connecticut
5 06902. My telephone number is (203) 328-0671 and my email address is
6 julie.patterson@twcable.com.

7 Q. WHAT ARE YOUR JOB RESPONSIBILITIES?

8 A. I am responsible for legal affairs and state and federal regulatory issues relating to Time
9 Warner Cable's deployment of Voice Over IP services and telecommunications services
10 throughout the country. This involves obtaining necessary telephone authorizations from
11 state utilities commissions; providing advice regarding regulatory compliance; developing
12 regulatory policy; and providing support to Time Warner Cable's Divisions relating to all
13 issues relating to Voice Over IP and telecommunications services.

14 Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND
15 EXPERIENCE.

16 A. I am an attorney and have specialized in the area of communications. I practiced
17 communications law in private practice for several years. I then served as an Attorney
18 Advisor in the Common Carrier Bureau of the Federal Communications Commission. While
19 working for the FCC, I worked on issues relating to local telephone competition, the
20 deployment of broadband services, Bell Operating Company section 271 applications, and
21 communications and media mergers. Immediately prior to joining Time Warner Cable, I was
22 Associate General Counsel for Net2Phone, Inc., an IP Telephony company. I have a B.A.
23 degree from the University of Pennsylvania and a J.D. from the College of William and
24 Mary.

1 Q. PLEASE BRIEFLY DESCRIBE YOUR COMPANY'S CORPORATE STRUCTURE.

2 A. Time Warner Cable Information Services (South Carolina), LLC ("TWCIS") is a limited
3 liability company organized under the laws of the State of Delaware. The two members of
4 the company are Time Warner Cable Inc. ("TWC"); and Time Warner Entertainment-
5 Advance/Newhouse Partnership ("TWEAN"). Time Warner, Inc. is the ultimate corporate
6 parent of TWC and TWEAN. Time Warner Cable is committed to providing the necessary
7 financial support to the operations of TWCIS.

8 Q. ARE YOU FAMILIAR WITH THE APPLICATION YOUR COMPANY SUBMITTED TO
9 THIS COMMISSION?

10 A. Yes, I am familiar with the Application.

11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

12 A. The purpose of my testimony is to present evidence on the financial, technical and
13 managerial abilities of TWCIS and to discuss the proposed expansion of our certificated
14 authority to include those areas served by the following incumbent local exchange carriers:
15 Farmers Telephone Cooperative, Inc.; Fort Mill Telephone Company, d/b/a Comporium
16 Communications, Inc.; Home Telephone Company, Inc.; PBT Telecom, Inc.; and St. Stephen
17 Telephone Company (collectively "ILECs").

18 Q. PLEASE DISCUSS THE MANAGERIAL ABILITY OF TWCIS TO PROVIDE
19 TELECOMMUNICATIONS SERVICES IN SOUTH CAROLINA.

20 A. In Order No. 2004-213, the Commission concluded that TWCIS possessed the managerial
21 and technical resources to provide telecommunications services. TWCIS continues to rely on
22 the same individuals identified in its initial certification.

23 In addition, TWCIS relies on its local employees headed by Charlene Keys, Vice
24 President & General Manager of Digital Phone. Ms. Keys most recently served as the
25 Managing Partner/Co-Founder of Civature Consulting, Inc., in Atlanta, Georgia. She has also
26 held senior management positions at KMC Telecom; MCI WorldCom, Inc.; and Sprint

1 Corp. While serving as General Manager at Ameritech Corp. in mid-1990's, Ms. Keys was
2 selected to participate in an executive exchange program with Deutsche Telecom in Bonn,
3 Germany. She has a Master's Degree in Business Administration from Mercer University in
4 Atlanta and received her Bachelor's Degree in Business from the University of the State of
5 New York in Albany. Locally and nationally TWCIS is managed and operated by a team of
6 well-qualified and seasoned telecommunications professionals who are capable of providing
7 state of the art services.

8 Q. DESCRIBE TWCIS'S FINANCIAL ABILITY TO OPERATE AS A
9 TELECOMMUNICATIONS CARRIER.

10 A. Time Warner Cable maintains a relationship with TWCIS which provides funding, financing
11 and the capital necessary to provide services to customers in the expanded service area.
12 Time Warner Cable is committed to providing the financial support as needed for the
13 expansion of authority into the ILECs' service area.

14 Q. PLEASE DESCRIBE THE OPERATIONS OF TWCIS AND THE SERVICES IT
15 PROPOSES TO OFFER IN SOUTH CAROLINA.

16 A. TWCIS seeks authority to expand its certificated authority to include ILECs' service area. At
17 the time we filed this application last October, TWCIS anticipated that it would be providing
18 the same facilities-based Internet Protocol ("IP") voice service currently being provided to
19 TWCIS customers. TWCIS is currently providing features similar to those offered by
20 traditional analog telephone service but utilizes IP technology to transport telephone calls.
21 Customers are able to call and be called by other IP voice service subscribers as well as other
22 parties connected to the public switched telephone network ("PSTN"). The service is offered
23 on a bundled flat-rate basis and allows standard local calling in addition to operator services,
24 directory assistance, enhanced "911" services, outbound 800 toll free calling, custom calling
25 features such as call waiting, caller identification, and directory listing. From a consumer

1 perspective, TWCIS currently provides unlimited local and long distance calling for a single
2 price that includes popular calling features. TWCIS utilizes local number portability
3 permitting consumers to maintain their existing telephone numbers in addition to whole-
4 home wiring and the opportunity to utilize each telephone jack in the home. The proposed
5 services are described more completely in the current South Carolina Tariff which is on file
6 with the Commission.

7 Q. WHAT HAS CHANGED SINCE THE TIME TWCIS FILED ITS APPLICATION?

8 A. As we indicated in our application Voice Over IP is a new technology. The Federal
9 Communications Commission recently addressed the question of whether Voice Over IP
10 services are subject to state and/or federal regulation *In the Matter of Vonage Holdings*
11 *Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public*
12 *Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-
13 267, released November 12, 2004 ("Vonage Order"). Paragraph 32 indicates that to the
14 extent cable companies provide VoIP services, state regulation is preempted. The FCC
15 preempted the states from imposing "certification, tariffing or other related requirements as
16 conditions to offering DigitalVoice" Vonage Order, ¶ 46.

17 Q. HOW DOES THIS CHANGE AFFECT TWCIS CURRENT APPLICATION?

18 A. Since the Vonage Order preempts the state from imposing certification and tariffing
19 requirements, TWCIS intends to withdraw the retail service offerings in its current tariff once
20 a new non-regulated entity is created to provide the retail voice services currently being
21 offered by TWCIS. TWCIS intends to remain a certificated carrier and will obtain
22 interconnection services from incumbent LECs and eventually offer wholesale services to the
23 newly created non-regulated entity.

1 Q. HOW WILL THIS CHANGE IMPACT REGULATORY COMPLIANCE ISSUES?

2 A. Since the Vonage Order is currently being appealed, TWCIS and the newly created entity
3 will voluntarily comply with all applicable rules respecting the collection of universal service
4 fund charges, taxes, reporting requirements, and 911 services. However, as stated in the
5 regulatory disclaimer, TWCIS does not want anything in the application or docket to be
6 construed as a concession or agreement by TWCIS that the services at issue constitute
7 telecommunications services, local exchange services, common carrier offerings, or services
8 that are otherwise subject to federal or state regulation.

9 Q. WHAT FACILITIES WILL TWCIS USE TO PROVIDE ITS PROPOSED
10 INTEREXCHANGE AND LOCAL VOICE SERVICES?

11 A. TWCIS predominately uses the facilities of Time Warner Cable to provide the IP voice
12 services. Time Warner Cable owns and manages cable systems serving 10.9 million
13 subscribers in 27 states. In South Carolina Time Warner Cable serves approximately 340,000
14 customers in 71 different communities. At present, Time Warner Cable has more than 68,000
15 high-speed data customers in South Carolina. TWCIS draws upon the engineering and
16 technical support of its specialized staffs to manage its network and provision services. The
17 services are delivered over a managed network with quality of service standards, ensuring
18 that customers are provided with the level of quality offered by traditional telephone service
19 and to which they are accustomed.

20 In order to reach premises not served by Time Warner Cable, calls must at times
21 traverse the PSTN. TWCIS completes these calls through relationships with competitive
22 local exchange carriers that provide a variety of services, including the termination of local
23 and toll calls, the provision of directory assistance and operator services, and the delivery of
24 911 calls to the appropriate public safety answering points. Calls destined for PSTN are
25 terminated in accordance with intercarrier compensation regimes. TWCIS currently has an

1 agreement for MCI to carry TWCIS' traffic. MCI then interconnects with the local exchange
2 carrier. TWCIS intends to start negotiating directly with local carriers for its own
3 interconnection, exchange and commercial agreements. Time Warner Cable's Global
4 Network Operations Center located in Herndon, Virginia will provide operational monitoring
5 and control capabilities to ensure support for customers 24 hours per day, seven days per
6 week.

7 Q. WHICH CARRIER OR CARRIERS SERVE AS YOUR UNDERLYING CARRIER FOR
8 INTEREXCHANGE SERVICES.

9 A. At present, TWCIS uses MCI as its underlying carrier. As indicated above, once the retail
10 tariff is withdrawn, TWCIS will provide wholesale services to the unregulated entity and
11 negotiate its own interconnection, commercial, and exchange agreements with other carriers.

12 Q. HAS YOUR COMPANY BEGUN NEGOTIATIONS WITH THE ILECS IN SOUTH
13 CAROLINA?

14 A. No.

15 Q. IS THE COMPANY SEEKING TO PIERCE THE RURAL EXEMPTION FOR THE ILECS
16 OR OTHER MEMBERS OF THE SOUTH CAROLINA TELEPHONE COALITION IN
17 THIS PROCEEDING?

18 A. No. TWCIS is not making a bona fide request of the ILECs for interconnection, services or
19 network elements under 47 U.S.C. § 251(c) in this proceeding. We are simply requesting
20 authority to amend our certification order to include the service territories of these ILECs. If
21 our request is granted, then we must first make the request for interconnection before the
22 Commission has to address the issues related to whether to terminate the exemption for each
23 ILEC.

24 Q. HOW WILL TWCIS BILL FOR ITS SERVICES?

25 A. Consumers will be billed for their voice services, in addition to other Time Warner Cable-
26 provided services, on a single monthly billing statement.

1 Q. HOW WILL TWCIS MARKET ITS SERVICES?

2 A. TWCIS markets its IP voice services, which are branded as "Time Warner Cable Digital
3 Phone," to existing high-speed data service users through direct mail and e-mail campaigns.
4 We also market our IP voice services through other channels, including local television
5 commercials, newspaper advertising and radio broadcasts advertising.

6 Q. WILL TWCIS USE TELEMARKETING AS A METHOD FOR SELLING ITS SERVICES?

7 A. TWCIS has used telemarketing as a method for selling its services to existing Time Warner
8 Cable customers in a promotion which was filed with the Commission. The script was
9 provided to the Commission on June 7, 2004.

10 Q. HOW ARE CUSTOMER INQUIRIES/DISPUTES HANDLED?

11 A. Customers can contact the company's customer service centers by calling the following
12 numbers:

13	Columbia	(803) 252-2253
14	Orangeburg	(803) 534-7373
15	Sumter	(803) 469-2200
16	Myrtle Beach	(843) 913-7941
17	Florence	(843) 662-8191
18	Summerville	(843) 871-7000

19 Customer service representatives are available twenty-four hours per day, seven days a week.

20 Q. IN WHAT OTHER STATES HAS TWCIS OR AFFILIATED ENTITIES RECEIVED
21 AUTHORITY TO PROVIDE INTEREXCHANGE AND/OR LOCAL VOICE SERVICES?

22 A. Time Warner Cable Information Services (North Carolina), LLC was authorized to provide
23 IP-based voice services in North Carolina on July 23, 2003. In addition, the following
24 affiliated entities have also been authorized to provide IP-based voice services by their
25 respective states' utilities commissions: Time Warner Cable Information Services (Maine),
26 LLC; Time Warner Cable Information Services (Ohio), LLC; Time Warner Cable
27 Information Services (Louisiana), LLC; Time Warner Cable Information Services
28 (Minnesota), LLC; Time Warner Cable Information Services (California), LLC; Time

1 Warner Cable Information Services (Nebraska), LLC; Time Warner Cable Information
2 Services (Hawaii), LLC; Time Warner Cable Information Services (Wisconsin), LLC; Time
3 Warner Cable Information Services (Texas), L.P.; Time Warner Cable Information Services
4 (Kansas), LLC; and Time Warner ResCom of New York, LLC. In addition, Time Warner
5 Inc. indirectly owns approximately 44% of the stock of Time Warner Telecom Inc., the
6 parent company of Time Warner Telecom of South Carolina, L.P., which was certified to
7 provide local and long distance services in South Carolina in Docket No. 2000-505-C, Order
8 No. 2001-93, on January 31, 2001. Time Warner Telecom is a separately-managed public
9 company whose stock is traded through NASDAQ and its financial results are not
10 consolidated with those of Time Warner Inc.

11 Time Warner Cable Information Services (Maine), LLC currently services more than
12 22,000 customers in the greater Portland, Maine area with more than 80 percent of customers
13 choosing to port their telephone numbers. Today in the Maine market, the voice service is
14 offered in packages ranging from \$39.95 per month to \$49.95 per month.

15 Q. WHERE DOES TWCIS OR AFFILIATED ENTITIES CURRENTLY HAVE
16 APPLICATIONS PENDING TO PROVIDE SERVICES?

17 A. The following affiliated entities currently have pending applications to provide IP-based
18 voice services at their respective states' utilities commissions: Time Warner Cable
19 Information Services (New Jersey), LLC; Time Warner Cable Information Services (Florida),
20 LLC.

21 Q. HAS TWCIS OR ANY AFFILIATED ENTITY EVER BEEN DENIED CERTIFICATION
22 IN ANOTHER STATE?

23 A. No.

24 Q. HAS TWCIS OR ANY AFFILIATED ENTITY EVER BEEN SUBJECT TO ANY
25 FEDERAL OR STATE INVESTIGATION REGARDING ITS SERVICES?

26 A. No.

1 Q. PLEASE EXPLAIN WHY TWCIS IS SEEKING EXEMPTIONS FROM SOME SOUTH
2 CAROLINA REGULATORY REQUIREMENTS.

3 A. The Commission granted TWCIS certain waivers in Order No. 2004-213. TWCIS requests a
4 continued waiver of the same requirements in regard to this request to amend its certificate
5 for this additional service area. Specifically, the Commission waived the requirements of 26
6 S.C. Regs. 103-610, 103-622.1(d), 103-631, and exempted TWCIS from any requirement
7 that it maintain its financial records in accordance with the Uniform System of Accounts.

8 Q. IN YOUR OPINION, WOULD THE ISSUANCE OF AN AMENDED CERTIFICATE TO
9 TWCIS BE IN THE PUBLIC INTEREST?

10 A. Yes. Competition serves the public interest by bringing about lower rates, improved quality
11 of service, and enhanced services. Amending the certificate will increase competition in the
12 South Carolina telecommunications market using a new technology. As the proposed service
13 relies on existing cable television facilities to reach customer premises, the service represents
14 one of the best hopes for viable competition in the residential telephone market. Granting
15 TWCIS's application will serve the public interest by allowing South Carolina residential
16 consumers in ILECs' service areas to have access, in many cases for the first time, to a
17 facilities-based competitive local telephone service. In addition, voice over IP technology can
18 link phone calls with other data which makes several new services possible. The technology
19 offers new flexibility to consumers who may be able to program their phones to redirect calls
20 to other numbers, take messages, and send email responses to a voice call. Furthermore,
21 TWCIS has made a significant investment within South Carolina and provides employment
22 opportunities for South Carolina residents.

23 Q. WILL THE SERVICE TWCIS INTENDS TO PROVIDE MEET THE SERVICE
24 STANDARDS OF THE COMMISSION?

25 A. Yes, TWCIS will comply with all applicable service standards established by the
26 Commission.

1 Q. WILL GRANTING YOUR APPLICATION ADVERSELY IMPACT THE AVAILABILITY
2 OF AFFORDABLE LOCAL EXCHANGE SERVICE?

3 A. No, granting our application will greatly enhance the availability of affordable local
4 exchange service in the State of South Carolina through the introduction of increased
5 competition and alternative service offerings using a new technology.

6 Q. IS TWCIS REQUESTING ALTERNATIVE REGULATORY TREATMENT FOR THE
7 EXPANDED SERVICE AREA?

8 A. The Commission authorized TWCIS to implement an alternative regulatory plan under S.C.
9 Code Sections 58-9-575 and 58-9-585 in Order No. 2004-495. TWCIS requests to be
10 allowed to operate under the same alternative regulatory scheme in ILECs' service areas.
11 Under the alternative regulatory treatment, the Commission does not fix or prescribe the
12 rates, tolls, charges, or rate structures for TWCIS.

13 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

14 A. Yes.

1 MR. ELLERBE: Mr. Chairman, we didn't
2 talk about this ahead of time, we've got
3 some rebuttal testimony of Ms. Patterson.
4 I would propose to go ahead and cover it
5 while I've got her on the witness stand.

6 CHAIRMAN MITCHELL: With no objection,
7 we'll do that Mr. Ellerbe.

8 Q Ms. Patterson, did you cause to be prepared and prefiled
9 in this docket four pages of rebuttal testimony?

10 A Yes, I did.

11 Q If I were to ask you the questions contained in your
12 rebuttal testimony this morning, would your answers be
13 the same?

14 A Yes.

15 MR. ELLERBE: Mr. Chairman, we'd ask
16 that Ms. Patterson's rebuttal testimony be
17 copied into the record as if given from
18 the stand.

19 CHAIRMAN MITCHELL: We'll do that, Mr.
20 Ellerbe. It will be read into the record
21 as if given orally.

22
23 [PREFILED REBUTTAL TESTIMONY OF
24 JULIE Y. PATTERSON FOLLOWS]:

1 Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR THE
2 RECORD.

3 A. My name is Julie Y. Patterson and I am Vice President and Chief Counsel, Telephony for
4 Time Warner Cable. My business address is 290 Harbor Drive, Stamford, Connecticut
5 06902. My telephone number is (203) 328-0671 and my email address is
6 julie.patterson@twcable.com.

7 Q. ARE YOU THE SAME PERSON WHO PREVIOUSLY FILED TESTIMONY IN THIS
8 PROCEEDING?

9 A. Yes.

10 Q. HAVE YOU REVIEWED THE TESTIMONY OF EMMANUEL STAURULAKIS AND
11 KEITH OLIVER FILED ON BEHALF OF THE SOUTH CAROLINA TELEPHONE
12 COALITION ("COALITION TESTIMONY")?

13 A. Yes. I have.

14 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

15 A. Specifically, my rebuttal testimony comments upon issues raised in the Coalition Testimony.

16 Q. WOULD YOU PLEASE EXPLAIN?

17 A. Time Warner Cable Information Services (South Carolina), LLC ("TWCIS") would like to
18 respond to the testimony raised in the Coalition Testimony and to clarify its position in the
19 following areas: (1) *Vonage* preemption, (2) impact on availability of affordable local
20 exchange service, (3) support for universally available telephone service at affordable rates,
21 and (4) impact on the public interest.

22 Q. DOES THE VONAGE DECISION PREEMPT THE COMMISSION'S AUTHORITY?

23 A. The FCC has indicated that to the extent cable companies provide VoIP services, state
24 regulation is preempted. The FCC's Order in the *Vonage* case made it clear that if a cable

1 operator providing VoIP-based services satisfied three specific criteria, then it would be
2 subject to preemption of state certification and tariffing requirements to the same extent as
3 the services at issue in the specific petition filed by Vonage. As an affiliate of a cable
4 operator, utilizing the facilities and plant of that cable operator, TWCIS satisfies the FCC's
5 criteria and, therefore, is subject to preemption ordered in the *Vonage* case.

6 Q. WILL GRANTING THIS APPLICATION ADVERSELY IMPACT THE AVAILABILITY
7 OF AFFORDABLE LOCAL EXCHANGE SERVICE?

8 A. Mr. Oliver incorrectly indicates that granting our request will have an adverse impact in the
9 areas served by rural companies by stating that TWCIS would not contribute to state and
10 federal universal service funds because non-regulated revenues would not be assessed such
11 contributions. As I indicated in my direct testimony, because the FCC's order in the *Vonage*
12 case did not address payment into state or federal regulatory funds generally or Universal
13 Service specifically, TWCIS and the newly created entity will comply with all applicable
14 rules respecting the collection and payment of state and federal universal service fund
15 charges. For that matter, TWCIS and its unregulated affiliate, which will be the retail
16 provider of Digital Phone VoIP-based services, will both make payments into all regulatory
17 funds applicable to traditional telephony and will both satisfy the same taxing obligations
18 applicable to traditional providers of telephone services. If there are changes in the future in
19 regard to whether TWCIS and the newly created entity are required to comply with the
20 collection of state and/or federal universal service fund charges, TWCIS will comply with the
21 new requirements and applicable law.

22 Q. EXPLAIN HOW GRANTING THIS APPLICATION WOULD ENHANCE THE
23 AVAILABILITY OF AFFORDABLE LOCAL EXCHANGE SERVICE.

24 A. Granting TWCIS' Application will greatly enhance the availability of affordable local
25 exchange service in the State of South Carolina through the introduction of increased
26 competition and alternative service offerings using a new technology. The Coalition

1 Testimony is incorrect in alleging that granting this Application will adversely affect the
2 availability of affordable local exchange service. As stated in my direct testimony, TWCIS
3 will participate and comply with all existing intercarrier compensation regimes and will
4 contribute to state and federal universal service programs. Indeed, TWCIS is doing so in
5 South Carolina, as well as at the federal level, today.

6 Q. DOES TWCIS SERVICE MEET THE PUBLIC INTEREST STANDARD?

7 A. Yes. Granting a certificate to TWCIS will promote the public interest by increasing the level
8 of competition in the South Carolina telecommunications market using a new technology. As
9 the proposed service relies on existing cable television facilities to reach customer premises,
10 the service represents one of the best hopes for viable competition in the residential
11 telephone market. Granting TWCIS's Application will serve the public interest by allowing
12 South Carolina residential consumers to have access, in many cases for the first time, to a
13 facilities-based competitive local telephone service. In addition, voice over IP technology can
14 link phone calls with other data which makes several new services possible. The technology
15 offers new flexibility to consumers who may be able to program their phones to redirect calls
16 to other numbers, take messages, and send email responses to a voice call.

17 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

18 A. Yes, it does.

1 Q [Mr. Ellerbe] Ms. Patterson, I'm going to try to get you
2 to summarize your testimony, perhaps clarify, if I could,
3 as Mr. Bowen said. Would you summarize your testimony
4 with respect to what it is that the applicant is seeking
5 in this proceeding?

6 MR. BOWEN: Mr. Chairman, if I can
7 just ask for a point of clarification, if
8 I may. I haven't been out here since you
9 put the new things in out here. But, as
10 far as the summaries, I assume that you're
11 still working on the same approach that
12 you have in the past, and that is, that
13 the summary has to be narrowed to what's
14 in the prefiled testimony.

15 CHAIRMAN MITCHELL: Yes, sir.

16 MR. BOWEN: Thank you.

17 MR. ELLERBE: Mr. Chairman, just to
18 clarify, I'd planned to ask three
19 questions: asking her to summarize her
20 prefiled direct and rebuttal testimony,
21 but giving a little bit more direction
22 than just asking her to summarize the
23 whole thing. But it is our intent not to
24 go outside what has been prefiled.

25 CHAIRMAN MITCHELL: That will be fine.

1 Thank you, sir.

2 Q [Mr. Ellerbe] So, the first thing I want you to do is to
3 summarize your testimony with respect to what it is we're
4 asking the Commission to do?

5 A As was stated in Mr. Ellerbe's opening statement, we were
6 granted a certificate by this Commission last year to
7 operate in certain incumbent local exchange carrier areas
8 within South Carolina as a competitive local exchange
9 carrier and interexchange carrier. We are here today to
10 seek authority as a fully regulated competitive local
11 exchange carrier and interexchange carrier to operate and
12 provide various telecommunications services in the areas
13 covered by the Coalition incumbent LECs. So, we are here
14 today simply to expand our operating territory into these
15 other areas. We showed last year, today have the same,
16 this is also discussed in my direct testimony, the same
17 financial, technical and managerial capabilities as we
18 were found to have had a year ago, and in fact have
19 enhanced and added to our technical and managerial
20 capabilities on the telecommunications side since last
21 year.

22 Q I want to clarify something. You said Coalition
23 companies, and you're probably not as familiar with the
24 Telephone Coalition as the rest of us in this room. Am I
25 correct that the areas that we're seeking to expand

1 certification into are the areas served by Farmers
2 Telephone Cooperative, Fort Mill Telephone Company, Home
3 Telephone Company, PBT and St. Stephen Company?

4 A That's correct.

5 Q I don't know whether you know this but that's not all of
6 the Coalition companies.

7 A Right, the Coalition companies that are intervening in
8 this proceeding.

9 Q The whole Coalition is intervening, Ms. Patterson, too.
10 So, we do need to clarify that. Would you summarize that
11 part of your testimony that describes the impact of the
12 FCC's Vonage Order, please, Ms. Patterson?

13 A We're here today, as I mentioned, to seek full CLEC and
14 interexchange authority as a fully regulated CLEC and IXC
15 to provide telecommunications services in these areas. We
16 do have a retail VoIP based service offering which we
17 brand as Digital Phone that we believe is subject to the
18 preemption of state tariffing and certification
19 requirements as described in the FCC's Vonage Order.
20 However, I do want to stress, as Mr. Ellerbe mentioned,
21 that we will, despite not being required to file tariffs
22 with respect to those retail services, that we will
23 continue to pay into state and federal Universal Service
24 Funds, continue to comply with enhanced 911 requirements
25 including the payment of surcharges, continue to comply

1 with all intercarrier compensation regimes, meaning the
2 payment of reciprocal compensation and intrastate and
3 interstate access charges, continue to provide law
4 enforcement assistance in terms of wire tapping with
5 respect to those services, continue to provide access to
6 persons with disabilities with respect to those services,
7 and payment of the telecommunications relay service
8 surcharge on the federal and state level all with respect
9 to the VoIP services. We do believe that those services
10 would be subject to the state certification and tariffing
11 preemption that was granted in the FCC's order.
12 Nonetheless, we are here today to seek full CLEC
13 authority to provide different services than those VoIP
14 services. We will be a fully regulated, competitive local
15 exchange carrier and interexchange carrier subject to the
16 Commission's full jurisdiction. I want there to be no
17 question about that. The Vonage Order has no impact on
18 this application in the sense that we are here to become
19 a fully regulated CLEC and IXC so that we may go and
20 obtain and enforce, if necessary, interconnection
21 agreements with local exchange carriers within the state.

22 Q Thank you, Ms. Patterson. Would you summarize your
23 rebuttal testimony for the Commission, please?

24 A Sure. As I mentioned in response to the last question,
25 the witnesses submitting testimony on behalf of the

1 Coalition make the statement that we will be seeking to
2 avoid the payment of access charges and other
3 intercarrier compensation and that we will seek to avoid
4 paying into State Universal Service Funds. And, I want to
5 be clear again that with respect to the VoIP service that
6 we believe would not be subject to tariffing requirements
7 and with respect to other regulated services that we
8 either provide today or seek to provide in the future, we
9 will be continuing to pay access charges, intercarrier
10 compensation, reciprocal compensation, and into State and
11 Federal Universal Service Funds as well as all other
12 regulatory funds as well as taxes with respect to those
13 services. In fact, with respect to access charges, we as
14 a facilities owner, in fact seek to collect access
15 charges for the use of our network once we start engaging
16 in direct interconnection agreements with incumbent LECs.

17 Also, with respect to the public interest, what this
18 application seeks to do is to expand our service
19 territories into areas currently served by rural
20 incumbent local exchange carriers. What we're attempting
21 to do is to be able to go provide service in those areas.
22 We're not providing service there today on the telephone
23 side, and we'd like to go in there and offer consumers a
24 choice in their telephone provider. Of course, it will be
25 up to the consumer whether they wish to take our service

1 but we believe that we should be granted authority by the
2 Commission to be able to go into these areas and offer
3 consumers such a choice in telephone service.

4 Q Thank you, Ms. Patterson. Please answer any questions
5 that counsel or the Commissioners have.

6 CHAIRMAN MITCHELL: Mr. Bowen.

7 CROSS EXAMINATION BY MR. BOWEN:

8 Q Good morning again, Ms. Patterson. In your testimony, you
9 go through a number of entities, Time Warner Cable, Time
10 Warner Telecom, and if you don't mind, on Time Warner
11 Information Services, you typically clip that short as
12 TWCIS, is that right? Or do y'all pronounce it a
13 different way?

14 A T-W-C-I-S, TWCIS is Time Warner, Inc., which is the stock
15 symbol of Time Warner.

16 Q As far as the Information Services, that's a long handle,
17 what would you abbreviate that to? What do y'all
18 abbreviate that to eternally?

19 A TWCIS.

20 Q You actually say T-W-C-I-S?

21 A Or TWCIS. There's not a lot of abbreviation.

22 Q Okay, TWCIS, and I'm sure I'm going to mess up on that.

23 A The regulated entity, the telephone entity.

24 Q Time Warner Cable sort of has the over-arching, is the
25 over-arching entity for all of the entities that you

1 have. Is that a fair statement?

2 A Not all the entities that you mentioned. It is the parent
3 company of Time Warner Cable Information Services, but it
4 doesn't have any direct relationship with Time Warner
5 Telecom.

6 Q So Time Warner Telecom is not within the reporting chain
7 or the ownership chain of Time Warner Cable?

8 A That's correct. Time Warner Telecom is partially in a
9 minority sense owned by Time Warner Cable's parent which
10 is Time Warner, Inc. It is a separately traded company
11 from Time Warner, Inc., which is Time Warner Cable's
12 parent, and again, Time Warner, Inc. owns only a minority
13 share, an investment that has been deemed non-strategic.
14 So, it's a completely separate corporate entity.

15 Q Deemed non-strategic by whom?

16 A Time Warner.

17 Q Time Warner Cable?

18 A Time Warner, Inc. Again, Time Warner, Inc. is Time Warner
19 Cable's parent. Time Warner, Inc. owns a minority share
20 in Time Warner Telecom. It has no managerial or
21 operational control and is separately traded.

22 Q You've talked in your testimony about a new entity that
23 you plan to form. Is that correct?

24 A Yes, that's correct.

25 Q Has that entity been formed as to date?

- 1 A No, it has not.
- 2 Q Who's going to own that entity?
- 3 A Time Warner Cable.
- 4 Q Time Warner Cable, okay.
- 5 A In some form it will ultimately, it would flow to Time
6 Warner Cable.
- 7 Q As far as the - what will happen to the entity that has
8 applied for certification today?
- 9 A Nothing will change and in fact, with respect to the
10 current certification that that entity holds, that will
11 remain intact. We are a, Time Warner Cable Information
12 Services is a competitive local exchange carrier in
13 portions of South Carolina. That will not change. We
14 simply seek to expand its service territories through
15 this application.
- 16 Q As far as your deregulated entity, have you put together
17 such a deregulated entity in other states?
- 18 A No, we have not.
- 19 Q What is the trigger or the whatever, I guess different
20 people call it different things, what is the decision
21 point upon your creating the entity?
- 22 A It's a very complicated corporate structure issue that
23 relates -
- 24 Q Excuse me for interrupting you, but I want - But, Mr.
25 Ellerbe just said a while ago, this is a very simple

1 case.

2 A The creation of the corporate entities and tax structures
3 and corporate structures is a very complicated issue. I
4 think that regardless of the entity that our view of this
5 proceeding and of these entities is that TWCIS is today,
6 will continue to be a full-fledged competitive local
7 exchange carrier subject to the Commission's
8 jurisdiction. We do intend to amend the tariff that's on
9 file with the Commission with respect to the retail VoIP
10 offering. However, with respect to regulated services
11 that we seek to provide through this application and
12 through which that will be provided in the other
13 certificated areas, Time Warner Cable Information
14 Services will still be a full-fledge CLEC with a tariff
15 and subject to all the rules and regulations of the
16 Commission.

17 Q I'd like to delve into that a little bit more if you
18 don't mind, Ms. Patterson, because one of the things that
19 you're asking for —

20 MR. BOWEN: Mr. Chairman, may I go to
21 the board?

22 CHAIRMAN MITCHELL Yes, sir.

23 MR. BOWEN: Just to diagram it easily
24 in my own brain, if you will.

25 [Mr. Bowen demonstrates on Board] Just for the sake of

1 discussion, I've just drawn a bar graph, that is the
2 entity today that you're coming in and asking for
3 services. Okay, this is, what'd you call it, TWCIS?

4 A TWCIS.

5 Q This is a full range of services to include retail
6 services. That's what you're asking for today, is that
7 not correct? In the five telephone company areas that
8 you're asking for services, you're asking to be able to
9 do retail, interconnection and all kinds of stuff.

10 A I actually believe that the application doesn't delineate
11 between retail and wholesale. It simply asks to provide
12 various telecommunications services.

13 Q Okay, so you're not asking for retail services?

14 A We're asking for authority to provide all types of
15 services, retail and wholesale.

16 Q Let me ask you this then. Does your tariff provide that
17 you provide under the tariff that you've got on file with
18 this Commission in this application to provide services
19 to a retail customer such as me?

20 A There is no, the proposed tariff does not and again, we
21 filed this application before the Vonage Order came out.
22 But to be clear, if we were to offer retail services in
23 your territories, they would not be, the tariffed
24 services would not be VoIP based. We would not tariff a
25 VoIP retail offering in the Coalition territories. We

1 would tariff a telecommunications retail offering that
2 would be offered in your territory. I can't speak to that
3 now, we haven't tariffed any such offering to date
4 anywhere in the state.

5 Q Do you have a copy of your application with you or do you
6 need to have that furnished to you by counsel?

7 A My counsel has a copy of that application.

8 Q Would you turn to page, well it's actually not numbered,
9 but page three, maybe a better way to say it is -
10 paragraph 9 of your application. Okay, let me just read
11 this. "TWCIS plans to provide facilities-based local and
12 long distance Internet protocol ("IP") voice service,
13 targeted to the residential market in ILEC's service
14 areas under the alternatively regulatory scheme...". That
15 is your application in this case, is that not correct?

16 A That's correct.

17 Q Do you consider residential service to be retail service?

18 A Yes, I do. If I can expand upon my answer. In my direct
19 testimony, which was filed several months after the
20 application was filed, on page 3 going into page 4,
21 actually page 4 going into page 5, I discussed that we
22 originally made the application with respect to the
23 retail VoIP offering. Since that time, the FCC issued an
24 Order which indicated to us that there would be no
25 tariffing or certification requirement for that retail

1 VoIP based offering. That does not mean that the
2 applicant does not seek to provide telecommunication
3 services. We seek to provide a variety of different
4 services in these areas. At this point, we seek to obtain
5 interconnection agreements and provide wholesale services
6 to ourselves and to others and to tariff a wholesale
7 offering. I can't speak to what services we may want to
8 provide in the future. But, that paragraph 9 in the
9 application is explained a little more deeply in the
10 direct testimony which was filed later.

11 Q Any particular reason why you didn't amend your
12 application at the time? When did you file your
13 application?

14 A In October 2004.

15 Q When was the Vonage Order?

16 A November 2004.

17 Q So one month later. Any particular reason why you didn't
18 amend your application?

19 A No, we simply clarified the actual services that were
20 proposed in the testimony.

21 Q As far as the state of South Carolina currently, you
22 provide service in BellSouth areas. Do you provide
23 service in Verizon areas or other areas?

24 A Yes, Verizon areas, BellSouth. We have authority to
25 provide service in Alltel areas and Horry Telephone

1 Company areas as well. Not Alltel, I apologize, Horry.

2 Q As far as the areas that you provide service now, do you
3 have tariff on file?

4 A We do. We intend to amend that tariff to not include the
5 retail VoIP offering, but to include only
6 telecommunications offerings.

7 Q But, you have not done that as of yet?

8 A That's correct.

9 Q [inaudible]

10 A No, we've discussed it with the Commission, with the
11 Staff, but we've not made the filing.

12 Q You're a lawyer, right?

13 A That's correct.

14 Q How long does it take to set up a company, like a LLC?

15 A Not very long.

16 Q Can you do it in a day?

17 A Likely. I believe that in terms of setting up the
18 company, amending the tariff, a lot of this is of course
19 connected with this application and trying to make it
20 clear. We're not trying to hide any ball here. We didn't
21 want to confuse it more than it was already confused by
22 the fact that we had a pending application that was
23 changed in its nature by the issuance of the Vonage
24 Order.

25 Q I have to say that again, going back to Mr. Ellerbe, I

1 thought we were going to make this simple. So, right now,
2 in answer to my earlier question as far as trigger or a
3 time to set up the deregulated operation, you don't know
4 when that's going to be?

5 A No, and I think that there's still questions as to
6 whether it's even necessary to do so. As I mentioned, on
7 the corporate side, it is a complex issue. I think on the
8 regulatory side, it's not necessarily necessary. The
9 regulated entity can offer unregulated services and
10 regulated services. I don't think that's a factor in
11 terms of the application before the Commission today,
12 whether an entity is set up or not or whether a tariff
13 has a retail offering that's subject to tariffing
14 requirements or not.

15 Q What I'd like to do now is just sort of go through what
16 Time Warner offers with its, you called it a digital
17 telephone or digital phone?

18 A Digital phone.

19 MR. BOWEN: Mr. Chairman, may I go to
20 the board?

21 CHAIRMAN MITCHELL: Yes sir.

22 Q Let's assume for the sake of discussion, and I understand
23 that there's certain prerequisites, one of which is for
24 instance, I would have to be one of two types of
25 customers. But, let's just say today that I'm a cable TV

1 customer of Time Warner and matter of fact, I am. So, I'm
2 a Time Warner Cable TV customer. Now to do this, and
3 here's my cable TV. Now to do this, I've got to have a
4 digital phone in my house. How do I do that? How do I
5 connect to your system to be able to do that? Here's my
6 phone.

7 A You don't need any special kind of telephone, customer
8 premise equipment. We would provide you, Time Warner
9 Cable would provide you with a voice enabled cable modem
10 that would connect to the cable wire coming out of your
11 wall. It would not be connected to the television set.
12 It'd be a cable coming out that would go into the TV set
13 and a cable coming out going into the cable modem.

14 Q So, it would be a cable I'm sure. I'm sorry. It would go
15 into the TV or the -

16 A The cable comes out of the wall currently and goes into
17 your television set. That would not change. There would
18 also be a cable coming out of the wall connecting to a
19 voice enable cable modem.

20 Q We're going to call this the modem, and this is the TV,
21 and here's the wire, or at least a facsimile thereof. So,
22 then what happens to my telephone. How do I now get
23 service?

24 A The telephone connects to the voice enabled cable modem.

25 Q Now what if I have multiple phones in my house?

1 A We would take a cord and connect it into your jack and by
2 disconnecting the subscriber inside wiring from the
3 incumbent LEC loop coming into the house. On the
4 subscriber side, we would activate the inside wiring
5 within the premise and jacks in the home.

6 Q Okay. So, basically, if I've got inside wiring in the
7 house and I've got another phone sitting over here and
8 I've got another phone sitting over here and I've got
9 three phones connected — if I've got more than one
10 phone, one phone would connect direct to the modem. If I
11 had more than one phone, what you would do then is
12 connect to the inside wiring of the house, disconnect it
13 from, say BellSouth, they used to be connected here but
14 now they would no longer be connected to the inside wire
15 but you would. So, all phones in the house now are
16 connected to the system and can use the digital phone
17 service that you have. Is that a correct statement?

18 A That's correct.

19 Q What about the current telephones I have in my house
20 right now that are plugged into those jacks, would those
21 phones still work?

22 A Yes.

23 Q So, I do not have to get a different kind of phone?

24 A That's correct.

25 Q Now this wire that's coming out of the TV and out of the

- 1 modem, where does that go?
- 2 A You mean comes out of the wall.
- 3 Q I mean comes out of the wall, I'm sorry.
- 4 A That goes out to the Time Warner Cable network, whether
- 5 it's out to a hub or a central office, eventually to a
- 6 cable head end.
- 7 Q Since I live in Columbia, the wire would go to somewhere
- 8 here in Columbia to a what?
- 9 A A cable head end.
- 10 Q A cable head end. Should I draw a square or a circle,
- 11 does it make any difference?
- 12 A It doesn't make any difference.
- 13 Q Cable head end, we'll just draw that. So, that's the
- 14 cable head end. Where does it go from there? Depending
- 15 upon where the phone call is going to.
- 16 A Where does what go from there?
- 17 Q Where does the line, if I pick up the phone in my house
- 18 and the phone call has gotten to this point, where does
- 19 it go from there?
- 20 A It depends on where its final destination would be.
- 21 Q Mr. Ellerbe lives in Columbia just like I do. Let's just
- 22 say, here's Mr. Ellerbe's telephone over here. I'm
- 23 calling him.
- 24 A It's an important point because my point was not
- 25 necessarily where the final call would be terminated but

1 whether it's terminated to another Time Warner Cable
2 telephone customer or whether it's terminated into the
3 [INAUDIBLE]

4 Q We'll get to that in a minute. I want to go first to
5 another Time Warner customer, like Mr. Ellerbe, and he's
6 in Columbia, and he doesn't live that far away but he
7 lives fairly close to my house.

8 A In that case, when the customer in the home picks up the
9 telephone, the voice enabled cable modem converts the
10 analog voice signals from the voice being spoken into the
11 telephone into Internet protocol packets. It then sends
12 those packets out into the Time Warner Cable network.
13 There's a soft switch device, not located here in
14 Columbia, but that's connected to the network that
15 recognizes that telephone call as being destined for
16 another Time Warner Cable telephone customer; therefore,
17 the call in Internet protocol form would be routed from
18 the head-end out to another neighborhood and to Mr.
19 Ellerbe's telephone through the cable modem. It would
20 actually be routed to the modem itself, which would then-

21 Q In his house?

22 A In his house — which would then convert those packets
23 back into analog voice signals so that he could hear the
24 call as a traditional voice message.

25 Q If he had a lot of phones in his house, like I do, not a

1 lot but a few, he would have same kind of deal like this?

2 A That's correct.

3 Q You said something about soft switch, where is that?

4 A The soft switch serving South Carolina is located in
5 Raleigh, North Carolina.

6 Q When it gets to the cable head end, does it just send a
7 signal out there to say, like an analog signal to come
8 back and say, hey it's here or does the packet go out
9 there or where does it go?

10 A The packet doesn't actually ever go to the soft switch.
11 The soft switch provides routing and signaling
12 information.

13 Q Basically it's just a signal out here for some soft
14 switch?

15 A That's right.

16 Q Just like a telephone call, right? We'll get to that in a
17 minute. So, basically, when I pick up my phone here, and
18 I'm just trying to summarize to make sure I got it right,
19 I've got a voice and it's going to go to the modem here
20 and then at that point when you say it's Internet
21 protocol, it's actually changing that voice to a packet.

22 A To a number of packets.

23 Q To a number of packets and then that number of packets is
24 going to go chugging this way to here and come back down
25 and hit this and then it's going to change back because

1 he can't understand packets when he's talking on the
2 phone so he's going to now understand the voice.

3 A That's a basic description of what's going on.

4 Q It doesn't make any difference, well, does it make any
5 difference whether he lives next door to me or somewhere
6 down the street as long as he's in the Columbia area
7 generally kind of, sort of, maybe, with respect to this
8 operation here?

9 A No, it would always go to a central point and then go
10 back down maybe to the same neighborhood, but to the
11 home, to the modem.

12 Q Let's take the other one that you suggested a minute ago.
13 We're going to make another phone call to person X, and
14 I'm going to say person X because they don't have Time
15 Warner so we don't want to identify them. So, person X
16 would now have to go on to the public switched network,
17 right?

18 A That's correct.

19 Q Okay, telephone network, PSTN. This person is in
20 Columbia. They live either next door to him, to Frank, or
21 live next door to me. Is this process here to here the
22 same?

23 A Yes.

24 Q Where does it change, and how do we get the phone call to
25 Mr. X?

1 A The soft switched device in Raleigh would recognize the
2 telephone number dialed is not belonging to a Time Warner
3 Cable digital phone customer. It would, therefore, route
4 the call from the head-end in Columbia, again speaking
5 very generally, but from that central point in Columbia
6 to a gateway device which would convert the call from
7 Internet protocol format to traditional TDM or circuit
8 switched format and route the call to a competitive local
9 exchange carrier with whom we work here in South
10 Carolina, it's MCI, and MCI would route the call and
11 terminate it to its final destination, to the incumbent
12 LEC serving that customer.

13 Q Would it go from here to - when you send it to MCI, does
14 it go to the public switched telephone network?

15 A That's correct.

16 Q In your case, that's MCI currently. Then from there, it
17 goes to, in Columbia's case, to BellSouth and then to the
18 telephone, to his telephone?

19 A Yes.

20 Q But, he doesn't have a modem like this because he's not
21 one of your type customers, right?

22 A That's right, and he doesn't need one because by the time
23 the call reaches him, it's back into traditional circuit
24 switched format to be read by a traditional phone without
25 the need for an Internet protocol device in the home.

1 Q You said, as a matter of fact there's been a lot of
2 discussion about the VoIP, or Voice over Internet
3 Protocol, when you talk about it, is that what this is in
4 red going from the modem at my house to Mr. Ellerbe's
5 modem by converting it to packets? Is that what that is,
6 Internet protocol?

7 A That portion of the call — Internet protocol is a
8 technology and that technology is being used, in that red
9 section, for that entire call. It's a technology, so it's—
10 that technology is being utilized in that portion of the
11 call.

12 Q That is the Internet protocol technology. Is that what
13 we're talking about?

14 A That's being used to provide that telephone
15 functionality.

16 Q The first word in Internet protocol, is Internet. Are
17 these packets right here actually hitting the Internet?

18 A No, but Internet protocol is a protocol that
19 unfortunately uses the same term. It does not require
20 that you utilize the public Internet. Internet protocol
21 is the process of digitizing any kind of information,
22 whether it's voice, video, data, anything into packet
23 format. It does not require any use of the Internet. It
24 simply refers to the packetization and the use of
25 Internet protocol technology.

1 Q If that call that I'm making, let's assume it's going to
2 a place other than Columbia, and let's assume that that
3 person is on the Time Warner network. So, it's going to
4 another Time Warner customer somewhere else, another
5 community, perhaps even another state. If it does that
6 [this is A, B, and C], I'm customer A, Mr. Ellerbe is
7 customer B, customer C in another location and that
8 person is also a Time Warner customer just like the two
9 of us are. So, they've got, I assume, one of these modem
10 things too. Is that right?

11 A That's correct.

12 Q Now, what we've got to do, we've got to get that thing —
13 I assume if I make the call from here, from the cable
14 head end over to this person, okay, how do we do that?

15 A It depends on whether that customer is located in South
16 Carolina or in another state.

17 Q Let's say South Carolina.

18 A In that case, the call would be carried entirely, again
19 within the current service territory entirely on Time
20 Warner Cable's network.

21 Q So, you're going to carry that on Time Warner's service
22 network so basically you'd just draw the red arrow again.

23 A It would not hit the public switched telephone network.

24 Q Beg your pardon?

25 A The call would not hit the public switched telephone

1 network.

2 Q You're saying it would not?

3 A It would not. It would not go through a gateway and hit
4 MCI.

5 Q Now that's in South Carolina. Let's assume, since you
6 mentioned another state, you have Time Warner in North
7 Carolina as well, right?

8 A That's correct.

9 Q Let's assume that the person lives in North Carolina, and
10 the person is a Time Warner customer. He's Mr. D. He's in
11 North Carolina. How does that get to him?

12 A Today that call would come out of the gateway device in
13 the Time Warner Cable Columbia central location, which is
14 identified in blue on your diagram. It would hit the PSTN
15 and MCI and be routed by MCI as a traditional telephone
16 call, to its final destination.

17 Q That call would actually go from PSTN, handled by MCI,
18 and for instance if it went to Raleigh, is Raleigh served
19 by BellSouth?

20 A Largely.

21 Q Let's say we're going to Raleigh, so we would now go to
22 BellSouth in Raleigh that would then connect to the modem
23 that the person in North Carolina had in Raleigh and then
24 connect. Is that correct?

25 A I'm sorry, this is a Time Warner Cable customer?

1 Q Yes.

2 A Okay. MCI would take that call to North Carolina. It
3 would eventually hit another gateway device. MCI would
4 take it to its local point of presence in Raleigh. It
5 would go through another gateway device and be delivered
6 to Time Warner Cable, and Time Warner Cable would deliver
7 that call to the modem.

8 Q You said it would go from — MCI would carry it to
9 another gateway device?

10 A That would be located in Raleigh at its point of presence
11 with Time Warner Cable in Raleigh.

12 Q They would then take it to MCI then or does it go
13 straight to BellSouth?

14 A It would go to MCI. It would not hit BellSouth, and it
15 would be sent to Time Warner Cable who terminate the call
16 over its network in Raleigh to the modem device and to
17 the customer in Internet protocol format.

18 Q Because that person, again, is the Time Warner customer?

19 A Right.

20 Q If the person was not a Time Warner customer, how would
21 it go?

22 A It would be carried by MCI from Columbia directly to the
23 incumbent LEC serving the customer.

24 Q So, in that situation, it would go to BellSouth.

25 A If I can just add two things to that. First, MCI would be

1 paying the incumbent LEC the appropriate access charges
2 based on the originating telephone number and the
3 terminating telephone number.

4 Q They would be paying those appropriate access charges to?

5 A To BellSouth.

6 Q To BellSouth. Is that BellSouth and MCI? In other words,
7 who determines what the appropriate access charges are?

8 A They're subject to their interconnection agreements, but
9 it's determined based on the calling party number and the
10 called party number. Secondly, in first answering your
11 question with regards to Raleigh, I said that today this
12 is how it happens. In the not too distant future, Time
13 Warner Cable would be able to take that call on its
14 network all the way to North Carolina and to the ultimate
15 customer home without hitting MCI or any person at the
16 public switched network.

17 Q But, that's not in effect today?

18 A That's not in effect today.

19 Q So, basically, what you're saying here is, if I
20 understand it, starting with a call coming from me going
21 to Mr. Ellerbe, the packets go from the modem to Mr.
22 Ellerbe's modem, right?

23 A That's correct.

24 Q If it's to another Time Warner customer in South
25 Carolina, maybe Columbia, the modem turns it into

1 packets, it comes over here — it's a modem, if it's
2 somewhere else in South Carolina, same basic concept, it
3 goes to the modem of the customer in another state, I
4 mean, say Charleston, somewhere.

5 A That's correct.

6 Q Is that right?

7 A Yes.

8 Q If it's another customer in Columbia, then it hits the
9 PSTN network but you change it from the packets here at
10 the gateway.

11 A If it's a customer, if the receiving party is a customer
12 served by someone other than Time Warner Cable.

13 Q If it's going over here, what happens to the packet when
14 it hits this gateway, and MCI is now going to carry it to
15 this gateway? What happens?

16 A Between the gateways, the protocol used is not Internet
17 protocol technology. It's traditional circuit switched
18 technology.

19 Q So, the gateway turns it back into this packet, so then
20 it's now a packet again, and MCI, the gateway is on this
21 side of MCI or on this side of MCI?

22 A The gateway is on the Time Warner Cable side of MCI.
23 That's not always, generally that's the case.

24 Q So, here's where we turn it back into a packet again at
25 the gateway, right?

1 A Yes.

2 Q Then it goes through Time Warner's facility in Raleigh?

3 A That's correct.

4 Q It goes to the modem and then it's changed back into a
5 telephone call. Is that right?

6 A Then the voice is transmitted in analog form to the ear,
7 yes.

8 Q From here, from the gateway in Columbia to the gateway in
9 Raleigh is just traveling over MCI regular lines.

10 A Correct.

11 Q If it's a non Time Warner, the packets stop here at this
12 gateway and then it's regular traffic the whole way.

13 A That's correct.

14 Q Again, this is called Internet protocol as far as the
15 technology to be able to turn it from a voice analog
16 voice into a packet and then being received at the other
17 end, turn it back into the other. Is that correct?

18 A That's correct. The packetization of the voice signal and
19 routing of those signals, all of them.

20 Q Are you aware of the certification requirements in South
21 Carolina for someone to be awarded their certificate?

22 A I am.

23 Q Do you know what particular statute it is?

24 A I know that it's referenced in our application. I could
25 certainly refer to it, but I don't cite.

1 MR. BOWEN: Mr. Chairman, I've got a
2 number of copies here of the statute that
3 we're talking about. If I may, I'd like to
4 show this to the witness and have copies
5 distributed.

6 CHAIRMAN MITCHELL: Yes, sir, we'd be
7 happy to assist you in passing those out.

8 [Documents are Distributed]

9 Q [Mr. Bowen] Would you agree that this section, and this
10 is sort of a blowup of that section in the Code, that 58-
11 9-280 is a portion of the Code that deals with the
12 certification process?

13 A [Examining] Yes, it appears to be that.

14 Q Looking at Section B of that section, would you agree
15 that the last sentence in that section says,

16 In determining whether to grant a certificate
17 under this subsection, the commission may
18 require, not inconsistent with the Federal
19 Telecommunications Act of 1996, that the:

20
21 And then it goes through five points there?

22 A That's correct.

23 Q Okay. With respect to the second item,

24 Service to be provided will meet the service
25 standards that the commission may adopt.

26
27 And one of the reasons I wanted to ask you about that, as

28 I understood it earlier in your testimony, you said that

29 you would do that. Is that correct?

1 A That's correct.

2 Q Are you doing that now under your current certificate?

3 A Yes, now again, the services that we seek to provide
4 under the current application are not the services that
5 we just went through with in the last several minutes. We
6 seek to provide a variety of non Internet protocol format
7 telecommunications services in order to provide retail
8 VoIP services and other services throughout the state of
9 South Carolina. When we first got certificated, we were
10 certificated to provide telecommunications services in
11 addition to VoIP based services. We started providing
12 those in the Columbia area and some other areas of the
13 state in accordance with the requirements of the
14 Commission's rules.

15 Since that time, as I indicated, we plan to amend
16 our tariff and take out of that tariff the VoIP retail
17 offering. There still will be other tariffed
18 telecommunications offerings that will not involve VoIP,
19 will not involve Internet protocol, and will continue to
20 and, in terms of any future services, meet the service
21 standards that may be adopted by the Commission.

22 Q From your perspective, the thing that I drew up on the
23 board up there, deals with the VoIP portion?

24 A That's true, and to be clear, really what we're looking
25 to do here is to be able to step in and provide all of

1 those transport and other telecommunications services
2 that you show on that board that are provided today by
3 MCI.

4 Q You're not saying before this Commission that you aren't
5 receiving those services today because MCI is providing
6 those services to you today, are they not?

7 A They are today.

8 Q As a matter of fact, today you're providing, excuse me,
9 today this particular thing right here, assuming I have
10 digital phones, and I don't, but assuming I did and
11 assuming Mr. Ellerbe had a digital phone, and he may, but
12 I don't know that. So, assuming he is and assuming I am,
13 this would actually be happening today, is that right?

14 A That's correct.

15 Q That's currently tariffed by you before this Commission
16 today. Is that not right?

17 A That's correct, and as we made clear in our initial
18 application, those services - it is our position to meet
19 the service standards of the Commission.

20 Q So, today, they are under tariff. They're actually
21 operating today.

22 A Yes.

23 Q They're under tariff today, and they're meeting the
24 Commission standards today.

25 A Yes, although they're not the subject of the application

1 today.

2 Q They're subject to the application today. It's just your
3 testimony did not consist of what the application,
4 wouldn't you agree? Because what you filed as far as the
5 tariff in your application, I thought you said a while
6 ago it was before the Vonage Order and that's why you got
7 residential service on paragraph 9 of your application.

8 A The application today seeks to provide telecommunications
9 services local and interexchange services. The tariff
10 that will ultimately be filed after resolution of the
11 certification proceeding will not contain a VoIP retail
12 offering. It will contain a description of other
13 telecommunications services offered that will not include
14 IP based services.

15 Q What you're saying your intention is that you will file a
16 new tariff, this is your intention, to take this part out
17 of your tariff so when this person makes a call to that
18 person, that's no longer under the jurisdiction of the
19 Commission and no longer has to meet the service
20 standards that this Commission has.

21 A The FCC's preemption Order stated that state
22 certification tariffing and other related requirements
23 would be preempted. We take the position and have taken
24 the position thus far that certification and tariffing
25 requirements have been preempted. I don't have any

1 comment on whether service standards are preempted as
2 well. I think that's a legal conclusion. I mean, are you
3 asking for my opinion on that?

4 Q Are you a lawyer?

5 A I am a lawyer.

6 Q You're General Counsel, aren't you?

7 A I'm not General Counsel. I'm Counsel for Telephony
8 Operations.

9 Q Okay, but as Counsel for Telephony Operations for Time
10 Warner, do you say that service standards are included,
11 are preempted or are not preempted?

12 A I think that the Order itself is not clear. I think that
13 anything relating to certification, if the service
14 standards, in this case the statute links service
15 standards directly to certification. In other cases,
16 there are other requirements the Commission may impose
17 that are not directly linked to certification. So, in
18 this case, I would say that those would similarly be
19 preempted.

20 Q Maybe I should put it another way. What part of that
21 operation that's happening today would still be under the
22 jurisdiction of the Commission, and what standards does
23 this Commission have that you're saying that you're
24 living up to today that you would not live up to after
25 you're granted this certificate?

1 A The first question, the first part of the question was,
2 just to clarify something to make sure I understand, was
3 what portion of that diagram —

4 Q Let me just rephrase it so you can be sure. The call, for
5 instance, here in the Columbia area, just let's isolate
6 for that for right now, this call right here that I would
7 make to Mr. Ellerbe or to somebody else in Columbia, that
8 call today is tariffed by this Commission and is under
9 the jurisdiction of this Commission. Is that correct or
10 is that not correct?

11 A That's correct. To break up calls by portions and say
12 that portions of calls are under the jurisdiction of the
13 Commission and portions are not isn't the way that I
14 would view it. I view it as certain services are under
15 the jurisdiction of the Commission. From our perspective,
16 the provision of retail VoIP based services to end-user
17 residential customers in South Carolina, the provisions
18 of those services are no longer subject to state
19 certification and tariffing requirements. That doesn't
20 mean that there are telecommunications inputs being
21 provided to the retail provider of those services that
22 are subject to the jurisdiction.

23 For instance, MCI provides telecommunications
24 services to Time Warner Cable which uses those services
25 in addition to our own Internet protocol technology, our

1 own facilities and other things, to provide a retail
2 service to a customer. So, it's not portions of calls and
3 packet transmission, it's services that are subject or
4 not subject to jurisdiction of the Commission.

5 Q Let me try to rephrase, then. Everything that's on this
6 board, in South Carolina in which you are providing
7 service, a retail service, other than the MCI piece, you
8 consider to be preempted and no longer under the
9 jurisdiction of this Commission.

10 A Again, the MCI piece, notwithstanding our provision of
11 retail VoIP based services, it is our view - is no longer
12 subject to state certification tariffing and related
13 requirements of the Commission.

14 Q Are there any service standards or anything that you're
15 doing under your tariff today that you think would remain
16 in those service standards or any other standards that
17 the Commission has that you're living up to today, are
18 there any of them that would remain? And, if so, what are
19 they?

20 A From our perspective, our business won't change at all.
21 We will continue to operate essentially —

22 Q That's not my question, Ms. Patterson. My question is,
23 under the jurisdiction of this Commission, we're talking
24 about your VoIP services that are tariffed by this
25 Commission, that are under the jurisdiction of this

1 Commission, as per your understanding or as per your
2 testimony; when you try to take that out, after today,
3 you've set up your deregulated entity, you're taking that
4 out now, what part of what's going on today under the
5 jurisdiction of the Commission, when you take all that
6 out and put it in a non-regulated entity, what part of
7 that that you're doing today is going to stay, if any?
8 And, if so, what is it?

9 A Anything that would be done on the retail side by Time
10 Warner Cable in its provision of service to end-users
11 would not be subject to the jurisdiction. Now, there may
12 be other inputs in there that other telecommunications
13 providers provide —

14 Q I'm not asking about other telecommunications providers.
15 I'm talking about Time Warner.

16 A Then, no portion of the retail offering to the end-user
17 would be subject to state certification, tariffing and
18 related requirements.

19 Q Are you currently contributing to the USF on a state and
20 federal basis now?

21 A Yes, we are.

22 Q After the deregulation or non-regulation, if you will,
23 would you be making the same contributions to the USF on
24 both the state and federal level?

25 A Yes, we will. Nothing will change.

1 Q Nothing will change as to that. So, even though the part
2 we talked about awhile ago, that's now being taken
3 outside of the regulation of the Commission, this part
4 right here we're talking about, even though all that's no
5 longer there, you're still going to be paying, assuming
6 you don't have any more customers, assuming everything
7 stays the same as it is today, you will be paying the
8 same contribution to the USF in dollars that you're
9 paying today on the state side and on the federal side?

10 A That's correct.

11 Q Is the USF based on retail revenues?

12 A Yes, it is.

13 Q Is it your position that you don't have to pay that on
14 the state side because you no longer have retail revenues
15 or and that you're doing it voluntarily or on what basis
16 are you making that contribution?

17 A A few basis. One, as I mentioned, the FCC's Order said it
18 preempted state certification, tariffing and related
19 requirements and specifically reserved any decision on
20 Universal Service and the applicability of Universal
21 Service payments to that Service; therefore, we don't
22 believe that the Order was clear on whether it preempted
23 the requirements to pay into Universal Service. Because
24 we've been very public about our support for Universal
25 Service by VoIP providers, we've made the decision as a

1 company to continue to pay exactly as we've been paying
2 on the state and federal level.

3 Q Just as, prior to the Vonage Order, you tariffed and you
4 considered yourself under the jurisdiction of the
5 Commission. Now with the Vonage Order, you think that
6 you're being preempted so you don't have to do that
7 anymore and you're not?

8 A Simply withdrawing the retail tariffed offering.

9 Q If the next order that comes out of the FCC gives rise to
10 whether or not you have to pay, state, USF contributions
11 are questionable at that point, will you continue to pay
12 State USF contributions?

13 A If the FCC or the Legislature or this Commission made it
14 expressly clear that there would be no assessment on the
15 types of services that we provide then we would comply
16 with the law as it stands, which is what we're attempting
17 to do today.

18 Q What you're saying is, and as a matter of fact - I would
19 invite you to turn to page 3 of your rebuttal testimony,
20 and I would invite the Commissioners to do the same. I'm
21 looking at page 3 of your rebuttal testimony, looking at,
22 beginning at line 11, the sentence there,

23 As I indicated in my direct testimony, because
24 the FCC's order in the Vonage case did not
25 address payment of the state and federal
26 [regulatory funds, generally or USF specifically].
27

1 And that's what you just testified to. Is that not
2 correct?

3 A That's correct.

4 Q TWCIS and the newly created entity will comply
5 with all applicable rules respecting the
6 collection and payment of state.. [funds]. For
7 that matter, TWCIS and its unregulated
8 affiliate will be the retail provider of
9 digital phone.

10
11 Is that a misprint there?

12 A No, it's referring to the unregulated affiliate.

13 Q will make both payments into all regulatory
14 funds applicable to traditional... and satisfy
15 taxing obligations applicable to that.

16
17 Now does that mean, when you go back up and look at line
18 13, at the end, where you say, we'll comply with all,
19 "all applicable rules". If I'm understanding your
20 testimony, what you're saying is that whatever happens to
21 apply at the time and whatever the rule happens to be
22 applying at the time is what you're going to live with?

23 A We intend to comply with the law.

24 Q If the law changes as to your having to pay into the USF
25 or do other things or not comply with other things,
26 that's what you're going to do?

27 A That's true. If the law were to change to say that we had
28 to be certificated to provide retail VoIP, we would again
29 file a new tariff and start doing all the things that go
30 along with that.

1 Q You expect that to happen?

2 A I don't really have an opinion on that.

3 Q Looking down at line 18, beginning towards the end of
4 line 18 on that same page 3,

5 If there are changes in the future in regard
6 to whether TWCIS and the newly created entity
7 are required to comply with the collection of
8 state and/or federal Universal Service
9 charges, TWCIS will comply with the new
10 requirements and applicable law.

11
12 Again, going back to the aspects, whatever the law is at
13 the time is what you're going to comply with?

14 A We will comply with the law and with changes in law,
15 whether they're to our benefit or to our detriment.

16 Q So, the Vonage Order required you — does it require you
17 to set up a separate entity and now take all these things
18 that you're providing now, these services out from under
19 the jurisdiction of the Public Service Commission?

20 A We believe that it does.

21 Q Why?

22 A Because of the preemption that was granted to — the
23 specific Vonage issues and like services as ordered —

24 Q So, you could not voluntarily comply with state juris-
25 dictional requests and requirements with respect to
26 service standards and things such as that?

27 A To tell you the truth, we've had very many instances in a
28 number of states where we've, for instance, had pending

1 applications and they've been not addressed by those
2 states. I think that we're working with states, and our
3 view is we need to comply with the laws as the FCC
4 ordered it.

5 Q Does TWCIS plan to seek either ETC status or the
6 designation of carrier of last resort?

7 A Not at this time.

8 Q What does that mean?

9 A There are no plans at this time for that to occur. Again,
10 to be clear of what TWCIS will be offering immediately,
11 there's no current intention, and I can't speak for what
12 will happen in the years to come, but for the regulated
13 CLEC entity to provide retail services to end-users,
14 which is a requirement of ETC status, we are seeking to
15 provide a number of local and interexchange
16 telecommunications services to the affiliated VoIP entity
17 and others, file a tariff for essentially wholesale
18 transport and other types of services so that we may
19 provide VoIP to end-users and we may serve commercial
20 businesses and things like that. There are no plans today
21 for ETC status to be obtained although I can't speak for
22 the future.

23 MR. BOWEN: Mr. Chairman, I don't know
24 if this would be appropriate. If I might
25 have a few moments now, if it would be an

1 appropriate time for a break?

2 CHAIRMAN MITCHELL: We were going to
3 take one. That's fine. We'll take a ten
4 minute break.

5 [Short Recess]

6 Q [Mr. Bowen] Ms. Patterson, with respect to E911, I know
7 that that has been a source of discussion, 911 or E911
8 has been a source of discussion throughout time with
9 respect to voice providers, etcetera. Can the digital
10 phone users, using Time Warner, make 911 calls from their
11 homes?

12 A They can in their fully enhanced 911 calls. I think that
13 the discussion that has gone on with respect to other
14 VoIP providers relate to two issues. One is the ability
15 of those service providers to access 911 trunking and the
16 selective [INAUDIBLE] true 911 system as Time Warner Cable
17 does. Then, if there is an inability for those service
18 providers to do so, often times their disclosure of that
19 inability to customers has been in question. In the case
20 of Time Warner Cable, we make it clear to customers that
21 we offer fully enhanced 911 using the existing 911
22 system, which means that we deliver location and number
23 information to PSAT operators and dispatchers directly.

24 Q Okay. So going back to the illustration on the board, if
25 I'm using and I've got your service, basically if I make

1 a E911 call, I make a call from my home, and I'm
2 connected up to your service, then the PSAT will be able
3 to read who I am and my address and all of that. Is that
4 correct?

5 A That's correct.

6 Q Now, can I take my phone with me to the beach and
7 basically make a call, a 911 call, from the beach, and
8 the PSAT down there'd know who I am and where I'm
9 located?

10 A The wireless, you'd need to have wireless capability to
11 go to the beach, but for instance, if you wanted to go to
12 your beach house — is that what you mean, to a home?

13 Q No, the beach. I wish I had a beach house, I don't have a
14 beach house. Mr. Ellerbe might have a beach house, but I
15 don't have one.

16 [Laughter]

17 A I'm not aware of any VoIP provider where you can take a
18 device with you and have it work wirelessly. That being
19 said, your question in terms of taking a phone or I
20 suppose your question relates to taking a modem out of
21 the house and installing —

22 Q My question is, is taking the phone. Is the service that
23 I'm receiving from you here in Columbia such that I can
24 take that phone with me down to the beach or some other
25 location and call 911?

1 A I guess my question is, would you be plugging that phone
2 in and what would it be plugged into. If you're at the
3 beach, you can take any phone with you, I guess.

4 Q So, it's not different than any other phone basically?

5 A You could conceivably take the modem with you to another
6 home anywhere in the world and try to plug it in, and it
7 would not operate. It would likely operate within
8 Columbia although that's questionable. We direct
9 customers that the service is intended for use in their
10 home at their address that's described in their service
11 agreement with us. Just as with their modem service or
12 their cable television service, that if they move, they
13 should call us, and we will move the service. We do not
14 market the service, I think this is your question, as a
15 portable service.

16 Q My question was twofold, but that was part of it. As I
17 understand your previous testimony, what you're
18 attempting to do is get the ability to provide
19 interconnection through TWCIS. Is that right?

20 A That's correct. We need certification in order to obtain
21 interconnection rights.

22 Q But, I thought you said today that you've obtained that
23 service through MCI today?

24 A That's correct.

25 Q Is it your position that if you can move the retail

1 service offerings and the tariffs that are currently with
2 this Commission today, the Commission doesn't have the
3 option to regulate that anymore. You're going to pull
4 that all out, according to what you're saying here. Is it
5 your position that if TWCIS gets the interconnection that
6 you could go ahead and serve in our territories on a
7 retail basis because it's not regulated?

8 A Before TWCIS obtains interconnection or after? I mean,
9 you can't provide the types of services that Time Warner
10 Cable has chosen to provide including the 911 that we
11 just talked about, including the access to the TRS
12 system, the telecommunications relay service, including
13 the ability to port telephone numbers. All of those
14 things require someone, whether it's an affiliated or an
15 unaffiliated entity to have interconnection agreements
16 with incumbent LECs because you need access to things
17 that are still controlled by incumbent LECs. So someone
18 needs to obtain an interconnection agreement for us to
19 physically be able to go in and provide service in the
20 areas served by your members.

21 Q Is it your understanding that MCI is providing you that
22 service today?

23 A MCI's providing us that service in portions of South
24 Carolina, and they're attempting to obtain
25 interconnection agreements in some of the areas that are

1 the subject of this proceeding. They do not have
2 interconnection agreements in any of those areas today.

3 Q Has MCI filed with this Commission and is on file with
4 this Commission today, a request for arbitration to
5 complete those interconnection agreements?

6 A With respect to some of the companies, yes. With respect
7 to, I'm not sure if all five are covered in the
8 arbitration. I don't believe that they are.

9 Q Whatever. I mean, it is what it is. I'm not -

10 A They have filed for arbitration.

11 Q Okay, so they have filed for arbitration.

12 A Yes.

13 Q Assuming this Commission approves the arbitration, or
14 resolves the arbitration, and now MCI has an
15 interconnection agreement with either one or more of the
16 five companies that are subject to this particular case
17 today. Then MCI could interconnect and would interconnect
18 with those companies. Is that right?

19 A That's correct.

20 Q MCI is your partner today to provide that function for
21 you.

22 A That's correct.

23 Q Is it your position or do you feel as though that TWCIS
24 can provide retail services in these five companies'
25 areas as soon as MCI gets that interconnection agreement?

1 A As soon as the interconnection agreement is obtained,
2 approved by the Commission and then implemented in terms
3 of deployment, yes.

4 Q So, the question about other things such as TWCIS having
5 to go in and get additional authority to provide or try
6 to do away with any rule exemptions or any of those kind
7 of things, those really at that point are over here on
8 the side because your position is that as long as MCI
9 completes its arbitration proceeding before this
10 Commission, then you can provide these services that
11 you're asking for today in those five telephone
12 companies' areas without any further authorization.

13 A As long as a few things happen. One is that the
14 arbitration is completed and that the issue, which I
15 believe has been raised in the arbitration, about MCI's
16 ability under the law to provide the services it provides
17 to Time Warner Cable. As long as that's upheld, and MCI
18 is able to continue to provide us those services, that
19 has to be in place. The Vonage Order must remain intact
20 and not be overturned through the appeal that's pending
21 now in the Ninth Circuit. And, I guess that's it, but
22 yes, that's correct.

23 Q And if I don't get hit by the beer truck on the way home
24 tonight.

25 A Well, I think we all have to make sure that the future

1 and the changes in the law and the changes that may come
2 about, I mean, one of the things that's being challenged
3 in that arbitration is the ability of MCI to provide the
4 wholesale services to Time Warner Cable that it provides.
5 If that is ruled to be unlawful, then Time Warner Cable
6 has to be able to go out on its own and get those
7 interconnection agreements. So, yes, it's taking place
8 separately. But, the implication, I suppose that it's not
9 necessary. I mean that's all I was trying to comment on.

10 Q TWCIS then, the reason that they're here today is
11 basically to try to provide the services for yourselves
12 rather than Time Warner providing the services for you
13 which they are doing today.

14 A You mean MCI not Time Warner.

15 Q MCI, I'm sorry.

16 A Yes and also to provide other regulated services to
17 commercial businesses as we see fit, to provide
18 commercial transport services and business telecom
19 services.

20 Q You can't do that today?

21 A Not in the areas in which the certification is being
22 sought today. We can in other areas.

23 Q Thank you. That's all the questions.

24 CHAIRMAN MITCHELL: Mr. Mustian?

25 MR. MUSTIAN: Thank you, Mr. Chairman.

CROSS EXAMINATION BY MR. MUSTIAN:

Q Ms. Patterson, the first couple of things, I will try to use the word TWCIS but if I refer back to just Time Warner, I'm trying to refer to the Cable Information Systems.

I think you stated that in 2004 Time Warner applied for its Certificate of Public Convenience and Necessity to provide services throughout South Carolina. Is that correct?

A Yes. The first application actually, I think, was filed in '03.

Q But, it was granted in 2004. Is that correct?

A Oh, granted. Yes, granted throughout the BellSouth and other ILEC areas. Not in place today or not at issue today.

Q Are all the principals that were associated with Time Warner Cable Information Services at that time, are they still a part of TWCIS at this time?

A Yes.

Q And in the same capacity?

A Yes.

Q I believe in your prefiled testimony that you filed in that previous application, you stated that TWCIS would be relying on the financial resources of Time Warner Entertainment Company to finance its operations. Is that

1 correct?

2 A That's correct.

3 Q Is that still the case today?

4 A There's been some corporate changes so it's Time Warner
5 Cable and ultimately Time Warner, Inc. that are providing
6 the financial commitment to Time Warner Cable Information
7 Services. It's just a change in positions. Things have
8 flipped in the subsidiary chain.

9 Q Have there been any changes to the financial stability of
10 any of the companies?

11 A No, there have not.

12 Q How many employees would you say that TWCIS has currently
13 in South Carolina?

14 A Time Warner Cable has about 900 employees in South
15 Carolina, in Columbia.

16 Q Time Warner Cable is separate from Time Warner Cable
17 Information Services. Is that correct?

18 A That's true, and we're creating — we've got allocation
19 and that kind of arrangements, but the employees of Time
20 Warner Cable are the employees that work for TWCIS and on
21 the TWCIS matters.

22 Q How many customers does TWCIS currently serve in the
23 South Carolina area?

24 A I'd be happy to answer that question under a confidential
25 provision. We consider that being of interest to be

1 competitive confidential information.

2 Q Well, is it safe to say that the company growing?

3 A The company's growing. Having gone into business in
4 approximately the fourth quarter of '04 and is largely
5 concentrating — it started in Columbia and is growing in
6 the telephone business.

7 Q Is TWCIS, you said that TWCIS has a target market area in
8 the areas serviced by Farmers and the other rural LECs in
9 this proceeding?

10 A Yes.

11 Q Have you performed a survey to determine what the
12 consumer interest would be in these areas?

13 A My understanding is that the local business folks have
14 done that kind of research, although I'm personally not
15 familiar with the results of that research.

16 Q How exactly does the company plan on marketing its
17 services in these areas?

18 A We market services to existing customers initially,
19 meaning existing cable television and high speed data
20 service customers through e-mail campaigns, direct mail
21 and telemarketing campaigns to existing customers, and
22 then through mass media eventually.

23 Q Is your sales force employed directly by TWCIS or is it
24 employed by Time Warner Cable?

25 A Again, through Time Warner Cable but with an arrangement

1 through TWCIS, and then any outside firms would be hired
2 by the affiliated telephone entity.

3 Q Now, does your sales force and marketing force receive
4 any special training for the TWCIS portion of the
5 service?

6 A Yes. Everyone in the local division receives extensive
7 training on digital phone, the product, the technology
8 and how the product is provisioned and provided.

9 Q I want to get back a little bit about the actual service
10 that TWCIS provides. I think earlier you had stated that
11 TWCIS does not actually provide any specialized consumer
12 premises equipment. Is that correct?

13 A No, well, telephones. We do provide the cable modem, the
14 voice enabled cable modem, which is considered customer
15 premise equipment. But, it's not a telephone.

16 Q You would consider the modem itself as being, I think as
17 the FCC's called it, specialized CPE. Is that correct?

18 A Yes, specialized IP-enabled or IP -

19 Q And that modem changes that audio into a digital signal,
20 is that correct?

21 A That's correct.

22 Q But, you are able to use a regular phone. You don't need
23 to use, I think as in the Vonage service, they offer a
24 soft phone.

25 A Yes, my understanding is that you either get a box

1 similar to our cable modem or you'd get a phone that has
2 the technology that's in that box embedded in the
3 telephone. But, we don't sell phones that have that. We
4 sell the modem, or we don't sell it, we provide it to the
5 customer.

6 Q I think you also stated that you have to be a recurrent
7 cable subscriber or a broadband customer of Time Warner
8 Cable, is that correct?

9 A Initially that's how we've always marketed the product to
10 tell you the truth. The movement has been to move to the
11 telephone only customer, customers that have no service
12 from Time Warner Cable other than telephone. I can't say
13 for certain whether today in South Carolina we have any
14 telephone only customers. If we don't, then the plan is
15 to certainly have them in the near future.

16 MR. MUSTIAN: Mr. Chairman, I'd like
17 to show Ms. Patterson a couple of
18 statutes.

19 CHAIRMAN MITCHELL: Certainly.

20 Q [Witness is Furnished Document] Ms. Patterson, for the
21 record, I believe I've shown you the South Carolina
22 statutes 58-9-10 and 58-9-280. Is that correct?

23 A [Examining] That's correct.

24 Q If you look with me on page of Section 58-9-10, which is
25 the definition section. If you look with me on page 2

1 under subsection 17, and if I could just read that and
2 you let me know if I read it correctly.

3 The term *broadband service* means any service
4 that is used to deliver video or to provide
5 access to the Internet and that consists of
6 the offering of: (a) a capability to transmit
7 information at a rate that is generally not
8 less than one hundred ninety kilobits per
9 second in at least one direction; or (b) any
10 service that combines computer processing,
11 information storage, and protocol conversion
12 to enable users to access Internet content and
13 services.

14
15 Did I read that correctly?

16 A Yes, you did.

17 Q If you look with me on the next statute, 58-9-280. I
18 believe this is the same section Mr. Bowen provided you
19 earlier, but I believe his stopped off a little shorter
20 than I needed it to. If you'll look with me on page 3 and
21 about midway down the page, that's actually subsection
22 B(9). If you'll let me know if I read this correctly. It
23 says,

24 Nothing in subsection (G) of this section
25 shall preclude the commission from assessing
26 broadband service revenues for purposes of
27 contributions to the USF, pursuant to this
28 subsection.

29
30 Is that correct?

31 A That's correct.

32 Q In your opinion, would the services that Time Warner
33 Cable Information Services is providing, would that be
34 considered broadband services?

1 A Looking at this definition, it certainly has the
2 capability to transmit information at a rate that is not
3 less than one hundred ninety kilobits per second in at
4 least one direction. So, it satisfies the first prong.
5 It's the beginning — I think it means any service that
6 is used to deliver video or to provide access to the
7 Internet. Now, this service is not comprised of an
8 Internet access service, so I'm not sure that this is
9 within this definition. I think it would meet both prongs
10 to tell you the truth, but I don't think it meets the
11 first two lines right under 17. It doesn't deliver video,
12 the service itself, and it doesn't provide access to the
13 Internet.

14 Q Even though Time Warner's services may actually be
15 broadband services, you think because it does not
16 actually touch the Internet, are you saying the public
17 Internet? Is that what you're interpreting that to be?

18 A Under this definition of broadband service, I think the
19 FCC's definition really is only to speed. So, it's
20 broadband in the sense that it's above 200 kilobits in
21 both directions. But, it's not marketed. It doesn't offer
22 the functionality of accessing the Internet in the sense
23 of an Internet access product, like an Internet service
24 provider's product, like a DSL or a cable modem service.
25 So, I think for that reason it doesn't fall within 17.

1 Q In other words, are you saying that if the telephone
2 service that Time Warner provided was expanded beyond
3 just the telecommunications realm that included some
4 version of Internet access or Internet capabilities, that
5 would be required to meet broadband?

6 A Yes, I think that for instance our cable modem service
7 would fall within this definition, which is offered on a
8 bundled basis or on an unbundled basis with the telephone
9 service.

10 Q Going back, does the customer have to live in an area
11 that Time Warner provides cable or broadband services in
12 order to get TWCIS' service?

13 A Yes. The customer has to be passed by a Time Warner Cable
14 plant.

15 Q I think in your application you are also requesting to
16 expand into the areas of St. Stephen Telephone. Is that
17 correct?

18 A That's correct.

19 Q Now, does Time Warner currently serve the St. Stephen's
20 area as far as it cable and broadband services? Are you
21 aware of that?

22 A Yes. My understanding is that we do serve that area. I
23 can't tell you how many customers off the top of my head
24 though.

25 Q Does Time Warner have broadband or cable facilities in

1 all these areas that it anticipates, is requesting to
2 expand into?

3 A Yes, we do.

4 Q I want to go back a little bit. I think earlier you were
5 saying that you can hook up a traditional telephone to
6 your cable modem or your voice modem, and it will then be
7 transferred into digital signal. Is that correct?

8 A That's correct.

9 Q But, initially on the telephone side of voice modem,
10 that's going to be analog. Is that correct?

11 A That's right because it's a traditional telephone without
12 Internet protocol technology.

13 Q When it's delivered to the end customer, where the call's
14 terminated, that customer also going to be - at least
15 that very last portion is going to be analog signal as
16 well. Is that correct?

17 A That's correct.

18 Q So, there's technically not going to be any net protocol
19 change in between end-users?

20 A Again, I guess it depends on if a Time Warner Cable
21 customer; ultimately if it's a Time Warner Cable customer
22 calling a Time Warner Cable customer, the modem on either
23 end would convert it from analog to digital and then from
24 digital to analog. So, there are conversions taking
25 place. So, between user A and user B there are two

1 protocol conversions taking place.

2 Q As far as between the voice modem of the TWCIS customer
3 and let's say, what if the call is routed over the PSTN,
4 and the regular BellSouth customer, there would be a
5 change from digital to analog of those customers. Is that
6 correct?

7 A That's right.

8 Q What kind of features does Time Warner offer along with
9 its digital phone service?

10 A Included in the package rate, we offer a package of local
11 and unlimited long distance for a single price. Included
12 in that price, there's caller-ID, call-waiting, call-
13 waiting with caller-ID. I believe that we've just
14 released call-forwarding. So, some features such as
15 those, most popular calling features. Voicemail is
16 available at an extra charge of, I believe, \$3.95.

17 MR. MUSTIAN: Mr. Chairman, I'd like
18 to provide a copy of the Vonage holding in
19 the FCC Order to Ms. Patterson, if I may.

20 CHAIRMAN MITCHELL: Yes, certainly.

21 Q [Witness is Furnished Document] Ms. Patterson, if you
22 turn with me on to page 21, I believe, of the FCC order,
23 specifically I'm looking at paragraph 32. If I could, I
24 just want to read this paragraph and if you could tell me
25 if I've read it correctly.

1 Indeed, the practical in severability of other
2 types of IP-enabled services having basic
3 characteristics similar to Digital Voice —
4

5 I believe that's Digital Voice referring to Vonage's
6
7 service —
8

9 —would likewise preclude state regulation to
10 the same extent as described herein.
11 Specifically, these basic characteristics
12 include: a requirement for a broadband
13 connection from the user's location; a need for
14 IP-compatible CPE; and a service offering that
15 includes a suite of integrated capabilities and
16 features, able to be invoked sequentially or
17 simultaneously, that allows customers to manage
18 personal communications dynamically, including
19 enabling them to originate and receive voice
20 communications and access other features and
21 capabilities, even video. In particular, the
22 provision of tightly integrated communications
23 capabilities greatly complicates the isolation
24 of intrastate communication and counsels
25 against patchwork regulation. Accordingly, to
26 the extent other entities, such as cable
27 companies, provide VoIP services, we would
28 preempt state regulation to an extent
29 comparable to what we have done in this Order.
30

31 Did I read that correctly?

32 A Yes, you did.

33 Q Now, there are a couple of things in that paragraph that
34 I want to talk about. First is, there's a requirement for
35 broadband connection from the user's location. In your
36 opinion, does Time Warner offer that broadband
37 connection?

38 A Yes, we do.

39 Q And, it's the broadband connection specifically that goes
40 from the modem to the cable head end and then from there

1 on to wherever it's going to go. Is that correct?

2 A That's correct. I believe that the requirement for
3 broadband connection from the user's location, our
4 position would be that we offer a broadband connection
5 from the home to the head end, just as you stated.

6 Q The second requirement is a need for IP-compatible CPE. I
7 think we talked earlier that the voice modem in your
8 opinion is IP-compatible CPE, is that correct?

9 A That's correct.

10 Q There's a third one that says a service offering that
11 includes a suite of integrated capabilities and features.
12 In your opinion, what is an integrated capability and
13 feature? If that's an easy question.

14 A It's not an easy question; that offers a suite of
15 integrated capabilities and features, a number of
16 capabilities and features that are offered together.

17 Q As far as Time Warner Services is concerned, is caller-ID
18 considered and call-waiting and all that, is that
19 considered integrated features? I guess specifically,
20 what about Time Warner Services would be considered
21 integrated features?

22 A I suppose, I mean under this, there's no definition of
23 what the features would be. We offer a number of features
24 and capabilities whether that be the standard, the
25 features that I mentioned, the caller-ID, call-waiting,

1 call-waiting with caller-ID, 3-way calling, voicemail,
2 that kind of thing. We also offer along with the voice, a
3 video product and a high speed data product. Those are
4 also features and capabilities that we offer.

5 Q That sentence goes on to say that:

6 [t]hose capabilities must allow the customer
7 to manage personal communications dynamically.

8
9 I've probably been bugging too many people about this,
10 but could you kind of give me an explanation of what you
11 think "dynamically" is or at least how Time Warner
12 Service allows customers to manage their communications
13 dynamically?

14 A I believe that, from my perspective and then I'll get
15 back to your question. The most important portion of that
16 sentence is the clause beginning,

17 Including enabling them to originate and
18 receive voice communications and access other
19 features and capabilities, even video.

20
21 That example provided by the FCC seems to incorporate
22 directly the services provided by Time Warner Cable. In
23 terms of the ability to, or allowing customers to manage
24 personal communications dynamically, my understanding of
25 that is — it's a confusing clause, but the ability to
26 obtain and control personal communications meaning the
27 ability to obtain access to the Internet, communications
28 with other people through telephones and even

1 communications received from a cable video service, to
2 manage those in one single integrated manner would be how
3 I would read that.

4 Q I think we discussed earlier that Time Warner customers—
5 well, Vonage customers, I believe as indicated in the FCC
6 Order — they are able to actually take their phone
7 physically with them from location to location. And, as
8 long as they have a broadband connection, can hook that
9 phone in anywhere. Is that correct?

10 A That's correct. That's my understanding.

11 Q But, it's your indication that Time Warner Cable's will
12 not have that same ability. Is that correct?

13 A That's correct, and just to clarify, that's a feature
14 choice. We choose to provide fully enhanced 911 and the
15 ability to wire tap communications to and from our
16 customers to assist law enforcement. Were we to offer a
17 portable service, we could offer neither of those. So,
18 it's really a matter of what a service provider chooses
19 to offer its customers, and we've chosen not to offer
20 that portable feature. I'd also add that I don't believe
21 that that portable requirement is embedded in this
22 difficult to decipher paragraph.

23 Q I believe earlier when you were talking with Mr. Bowen,
24 you did say that customers who live in Columbia could
25 potentially take that modem if they moved to another

1 house in Columbia, and it would still be able to work. Is
2 that correct?

3 A It would depend on the equipment that's located in the
4 head end, the devices that are there that feed the cable
5 modem service, the equipment that resides in the head end
6 and it may even reside closer to the home than the head
7 end at a node or at a hub site. If that modem is
8 compatible with the equipment in the neighborhood, the
9 next neighborhood over, then, the service would operate.
10 It might not be compatible. It depends on the equipment.
11 The most important point, however, is that the address
12 associated with that modem would remain the service
13 address that was originally assigned to the customer. So,
14 if the customer moved it, the ability to have location
15 specific 911 information passed to the PSAP would go away
16 and that's why we make great effort to notify customers
17 that they should not pick those modems up, that it's not
18 designed as a portable service.

19 Q When you notify them that it's not designed as a portable
20 service, do you make them aware of the issue with the 911
21 service, that this can be a problem?

22 A Yes, we do.

23 Q Is it possible for Time Warner Cable Information Services
24 to distinguish interstate from intrastate calls?

25 A In terms of - yes, because we know what number was called

1 and what number was receiving that call. We hand out only
2 telephone numbers to native rate centers, so we can
3 always tell the called party and the calling party and
4 therefore can determine the true jurisdiction of the
5 call.

6 Q But, unlike in Vonage, Vonage's customers, because they
7 do have that portability, I could be a Vonage customer
8 here in Columbia and take my phone with me to California
9 and as far as Vonage is concerned, they're unable to tell
10 if I'm calling from California or from South Carolina. Is
11 that correct?

12 A That's true from a customer point of view. I think
13 technically there are ways to determine where that actual
14 device is located and whether the call originated in
15 different places. But, that's true if you have a 803
16 number and you take the device to California, the caller
17 ID of a Columbia resident receiving a call from that box
18 would see Columbia, and they wouldn't know that the
19 customer was calling from California.

20 Q But, because of, essentially, one reason because the
21 number is not portable for Time Warner. Another being the
22 ability to look at the number that is being called, there
23 is a distinction between interstate and intrastate calls.

24 A Yes, I think that that's fair. I mean just in determining
25 the exact location of the originating party.

1 Q Going back to the previous order in 2004, the Commission
2 required TWCIS to contact the appropriate authorities
3 regarding 911 services in the counties and cities where
4 the company will be operating and that this contact
5 should be made before providing voice or dial tone
6 service in South Carolina, is that correct?

7 A Yes.

8 Q Does Time Warner, do they agree to continue to provide
9 this service, make these communications before entering
10 into the areas served by the rural LECs?

11 A Absolutely.

12 Q I believe also in the previous application there was some
13 concern about customers being aware that in the event of
14 a power outage, they could lose phone service. I believe
15 that order specified that Time Warner had to make that
16 information available and known to customers. Does Time
17 Warner continue to agree to do that in these expanded
18 service areas?

19 A We do. We do that today, and we will continue to do that
20 in every sales call that we make.

21 Q Are you familiar with the service that Vonage provides as
22 far as, do you think that the Digital Phone service that
23 Time Warner provides, will it compete with Vonage or vice
24 versa, will Vonage compete with Time Warner?

25 A I think on some level that's true. I think that given the

1 features and functionalities and various capabilities
2 that we provide, we compete. The more apt comparison
3 would be to the incumbent LEC service just because of the
4 fully enhanced 911, the ability to port telephone
5 numbers, the ability to have access to 611, 711, all
6 those types of things. I think we're more of a
7 competitive service to existing wireline telephone
8 service today.

9 Q I think, it's my understanding as a prerequisite to being
10 able to use Vonage's telecommunications service or
11 Digital Voice service, the customer must have a broadband
12 connection. Is that correct?

13 A That's correct.

14 Q If your company does provide a broadband service to one
15 of your Time Warner customers, is it possible for that
16 customer to use Vonage using your broadband connection?

17 A Absolutely. We're not aware, but based on if we provide
18 high speed data service to a customer that were using
19 that connection to obtain telephone service from Vonage,
20 it's not something that we would be aware of, as compared
21 to any other use of the connection.

22 Q That's because of what is being transmitted on broadband
23 is simply entered as information packets?

24 A Exactly, and we can't differentiate those packets from a
25 packet going to CNN.com, for instance.

1 Q Is it possible if a customer is, let's say he's solely
2 using TWCIS, is it possible to know on your end of the
3 facilities whether or not those packets are broadband
4 packets or voice packets?

5 A Yes, on our side, yes, because we have a separate path
6 for the voice packets and the data packets, but, yes, in
7 order to provide quality of service.

8 Q I think you had said earlier that TWCIS is currently
9 using MCI. Is it using it as its underlying carrier to
10 provide service?

11 A We buy wholesale services. I mean, underlying, we use
12 ourselves as an underlying carrier for portions of the
13 call and then for the public switched network portions of
14 the call, we use MCI.

15 Q If there are any problems with the technical portions of
16 the MCI part of the network, how are those resolved
17 between Time Warner and MCI?

18 A Anything that faces the customer is resolved by Time
19 Warner. MCI is transparent to the customer and would call
20 Time Warner. Time Warner works with MCI twenty-four/seven
21 to make sure that any network issues that arise are
22 resolved.

23 Q I believe you said earlier that MCI has filed an
24 arbitration with the Commission for interconnection with
25 the rural LECs, that correct?

1 A That's correct.

2 Q Assuming that that arbitration is approved by this
3 Commission and there is an interconnection agreement that
4 is set up, would TWCIS continue to seek its own
5 interconnection agreements with the rural LECs or would
6 they, just to clarify, or would they continue to use
7 MCI's interconnection agreements?

8 A We would continue to utilize MCI's agreement and work
9 with MCI, but we would also likely obtain our own
10 interconnection agreements, which is about why we're here
11 today. We can't really forecast the future and given the
12 potential merger with MCI and the fact that the agreement
13 does have a limited life term, we want to be prepared to
14 be able to carry calls entirely on our own. But, there
15 are no immediate plans to disengage MCI.

16 Q Does TWCIS have a business plan as to when it thinks it
17 might begin interconnection agreement negotiations?

18 A I think given the fact that the current request by MCI is
19 going to arbitration and the fact that these appear to be
20 taking an extremely long period of time, that we would
21 want to start those negotiations sooner rather than
22 later, regardless of our ultimate plan to carry calls,
23 when we would want to carry calls ourselves et cetera.

24 Q In the event you do enter into those interconnection
25 agreements, will you file those with the Commission as

1 required?

2 A Yes, we will.

3 Q In the case of commercial agreements, if Time Warner does
4 enter into commercial agreements, would you object to the
5 Office of Regulatory Staff reviewing those agreements?

6 A No, not at all.

7 Q Especially if ORS agrees to execute a protection
8 agreement?

9 A Sure.

10 Q I want to talk a little bit about extended area service
11 agreements. I think that we had talked before about how
12 that might be a factor in some of these areas. Are you
13 familiar with EAS agreements?

14 A I am generally.

15 Q [Illustrating on Board] I think we discussed before —
16 in certain situations, you may have an area, let's say
17 that is served by the rural LEC, and you may have an area
18 inside that is served by an ILEC, let's say Verizon for
19 this situation, and you have a customer who lives in a
20 rural LEC service area and a customer who lives in the
21 Verizon service area. Now, currently this rural LEC may
22 have an EAS agreement with this customer such that if the
23 rural LEC customer calls the Verizon customer, what would
24 normally be considered a long distance call, they will,
25 for the purposes of the EAS agreement, consider it a

1 local call. Is that correct?

2 A That's my understanding.

3 Q Sometimes what happens is a CLEC will come in and will
4 want to serve the area of Verizon and so this Verizon
5 customer then switches and becomes a customer of the
6 CLEC. Well, since there's no EAS agreement between the
7 rural LEC and the CLEC, this rural LEC customer is now
8 paying long distance charges when he calls the CLEC
9 customer. Is that correct?

10 A That's often the case, yes.

11 Q Are you aware of this being a problem in any of the areas
12 that Time Warner seeks to serve in?

13 A We've encountered it as a problem in areas where we are
14 receiving calls, having won the customer from a non-rural
15 ILEC, Verizon or BellSouth. Verizon I think in this case,
16 receiving calls from friends and family served by Farmers
17 Telephone, where those calls have been rated as toll
18 charges.

19 CHAIRMAN MITCHELL: Yes, sir?

20 MR. BOWEN: Chairman, if I could, I'd
21 like to just state for the record that Mr.
22 Ellerbe called me on behalf of, I guess
23 Time Warner, when that issue came up, and
24 the issue was in question. We've put in an
25 interim arrangement between Farmers and

1 MCI so that there would not be a problem
2 during the interim period of time in which
3 to try to resolve those differences. That
4 interim agreement is still into effect
5 right now, and we are continuing to try to
6 resolve those differences and we will
7 continue to resolve the differences.

8 CHAIRMAN MITCHELL: Yes, sir. Mr.
9 Ellerbe?

10 MR. ELLERBE: Mr. Chairman, I agree
11 with what Mr. Bowen said and just so — I'm
12 not trying to tramp all over your cross
13 examination, but the issue became one that
14 was of concern to Time Warner because our
15 customer was suddenly Mom living out here,
16 pay long distance, and we raised that
17 issue with Mr. Bowen. We worked it out.
18 It's being treated as a local call. We've
19 agreed to protect them if there's some
20 charges that may arise. Those are some of
21 aspects of the agreement, but we will try
22 to work that out. We expect to work it
23 out. We appreciate the cooperation of
24 everybody.

25 CHAIRMAN MITCHELL: Thank you, sir.

1 MR. BOWEN: I didn't mean to
2 interrupt, but I didn't know if he knew
3 that or not, and I just thought for a full
4 understanding of the Commission. That's
5 why I said it.

6 CHAIRMAN MITCHELL: Mr. Mustian, do
7 you need any further clarification?

8 MR. MUSTIAN: Well, actually I do have
9 one question. I'll direct this to the
10 Chair just for clarification. Is this
11 specifically an area of Farmers or is this
12 in all the rural LECs that are a party to
13 this proceeding today?

14 CHAIRMAN MITCHELL: Could we have a
15 response, Mr. Ellerbe?

16 MR. ELLERBE: Yes, sir. The Agreement
17 that we just described is in the Farmers
18 area into service areas of Verizon where
19 Time Warner is providing service.

20 MR. MUSTIAN: Okay. Thank you, Mr.
21 Chairman.

22 CHAIRMAN MITCHELL: Yes, sir.

23 Q [Mr. Mustian] With that being the case, number one, will
24 TWCIS continue in good faith to negotiate with Farmers in
25 negotiating these EAS Agreements?

1 A Yes. I mean, I think at this point — MCI is negotiating
2 those Agreements because they are the actual CLEC with
3 whom the number and the Interconnection Agreement, all
4 those things are associated. As we go into business, our
5 certificate will enable us to obtain Interconnection
6 Agreements and other agreements on our own and to do so,
7 we certainly will negotiate in good faith.

8 Q Okay. In the event that this does become a problem, will
9 you notify your potential customers or your customers
10 that this issue has arisen?

11 A Yes. I think that it's in our interest to certainly let
12 customers know if this is a problem, if we're aware of
13 it. I mean the problem was that we weren't aware of it
14 and then we were told by customers. But, to the extent
15 that we're aware of it and cannot resolve it, I think it
16 only helps us to be able to notify customers. I mean,
17 certainly we will do so.

18 Q If Time Warner does cover these areas served by the rural
19 LECs and let's say customers in some of the higher
20 density areas that are currently served by the rural LECs
21 do switch to your services, won't that impact the ability
22 of the rural LECs to provide affordable service in your
23 area, in that area?

24 A My view of that is that we will continue to contribute
25 Universal Service based on those customers. We will

1 continue to pay the rural LECs the access charges so that
2 the subsidy regime that's in place — although that rural
3 LEC will lose a customer to a competitor, they will have
4 no loss in other sources of revenue through the subsidy
5 system that's been set up. The only thing that will be
6 lost would be a customer to a competitor.

7 Q So, in your opinion, TWCIS coming in will not affect
8 affordable local service for those customers at all?

9 A No, because I think that if the public interest is that —
10 one of the goals is to have affordable local service. One
11 of the ways to ensure that is to have competition in an
12 area. and to give a consumer an additional choice will
13 ensure that there is local affordable service in that
14 area. Competition will ensure that affordability.

15 Q Has TWCIS ever been denied authority to operate in any
16 other state?

17 A No, it has not.

18 Q Is the company currently in good standing in all states
19 where it operates and with the FCC?

20 A That's correct. And again, just to clarify, they're
21 affiliates of TWCIS for South Carolina, North Carolina
22 and other states. But, yes, that's true — in good
23 standing in all states and with the FCC.

24 Q Has the company ever been the subject of any
25 investigation by either a state or federal body?

1 A Not other than simple customer complaints, none of which
2 have resulted in any administrative or enforcement
3 action.

4 Q Are you aware of the company ever being fined by either
5 this state or the Public Service Commission or any other
6 state commission or the FCC or any other federal body?

7 A No.

8 Q Okay.

9 MR. MUSTIAN: That's all I have, Mr.
10 Chairman.

11 CHAIRMAN MITCHELL: Thank you, sir.

12 EXAMINATION BY CHAIRMAN MITCHELL:

13 Q Ms. Patterson, as a follow up to Mr. Mustian, and I think
14 you pretty much tried to cover that question — but, in
15 reference to cherry-picking, you don't think that would
16 become an issue if you're only offering service in areas
17 that where your normal cablevision is going? Could you
18 tell me why that wouldn't be? Wouldn't you want to
19 serve, as Mr. Mustian asked you about, high density areas
20 or high volume areas?

21 A Being an affiliate of a franchised cable operator, we
22 have franchises from municipalities and plant in the
23 ground in certain places. We propose to serve every
24 location and every home that is passed by that plant. So,
25 I would tend to disagree with the notion of cherry-

1 picking because we're serving everyone that we're capable
2 of serving. That's not to say that we wouldn't at some
3 point potentially expand our plant. In terms of the
4 affect that serving those areas would have on rural phone
5 companies, again I think that the public interest is
6 served by having consumers have a choice. It fosters
7 innovation, the release of new products, the release of
8 competitive new products that forces people to lower
9 prices because they're competing and that will ensure the
10 availability of affordable local service and be in the
11 public interest. If the Telecommunications Act provides
12 that competition is good, then that's where we agree with
13 that.

14 Q I guess, once again, the affordability in those rural
15 areas would not be affected as far as your —

16 A Again, in terms of the price to consumers, I think the
17 introduction of competition into the market will ensure
18 that prices are kept at a competitive and affordable
19 level. In terms of the cost that a certain rural company
20 would have in serving customers and a loss of revenue
21 that it would experience by losing a customer, I can't
22 comment specifically on that. I've read the testimony,
23 and I understand the arguments, and because we're
24 contributing to Universal Service and paying all access
25 charges, the only revenue stream that would be affected

1 would be resulting from the loss of a retail customer,
2 which my reading of the 1996 Act is something that we
3 want to be fostered, to have the ability for companies to
4 compete. Again, if exemptions invoked and it's shown that
5 that should be pierced, and that's another issue, but
6 it's sort of a much larger issue than us, the policy is
7 for competition to be there. We're not doing anything
8 other than trying to compete.

9 CHAIRMAN MITCHELL: Thank you. Do we
10 have any other questions? Commissioner
11 Clyburn.

12 EXAMINATION BY COMMISSIONER CLYBURN:

13 Q Good afternoon. I'm having a hard time getting a handle
14 on this question. But, basically, the foundation of it —
15 I guess the premise would be Mr. Oliver's page 5 in terms
16 of his testimony, page 21 of the FCC Order 04-267, "the
17 Vonage Order", that paragraph 32 that ORS read into the
18 record, pages 2 and 3 of your rebuttal, which gives your
19 interpretation of the Vonage Order, and at the risk of
20 getting called down or objected to by Mr. Ellerbe, a
21 press release from the FCC, I understand that you have
22 some familiarity with this agency.

23 A I do.

24 Q You know that what usually accompanies an order, for
25 dummies like me, is a press release, which is usually an

1 unofficial statement of what can sometimes be a
2 voluminous opinion handed down by that body.

3 A That's true, and it usually precedes the opinion.

4 Q According to this particular news release, it was
5 released November 9, and I think the Vonage Order was the 12th.

6 A I think it was the 12th, or the 19th.

7 Q Right, subject to check, as y'all like to say. In your
8 rebuttal testimony, you talked about paragraph 32 that
9 talked about what you classify as the three specific
10 criteria that were named, say are specifically these
11 basic criteria. Can you tell me, you mentioned three
12 specific criteria. Can you tell me whether or not that's
13 an all inclusive — is it just three? I'm having some
14 issue with the phraseology. You mentioned that in terms
15 of preemption, that basically is the service that you
16 provide, the voice services provided satisfies three
17 basic criteria that this would be subject to preemption
18 from state certification. The basic criteria, is that an
19 all inclusive?

20 A I think that the order itself, of course was specifically
21 directed toward Digital Voice, the service offered by
22 Vonage. The language in paragraph 32 talks about other
23 types of IP-enabled services such as those offered by
24 Time Warner Cable, another cable operator and others
25 frankly. And then the FCC states that certain

1 characteristics, if present, having basic characteristics, that
2 if those basic characteristics were present then those
3 services would be subject to preemption to the same
4 extent as Vonage. Those basic characteristics include,
5 that might be the word that you're — I understand the
6 struggle, but I also think that they did list three
7 characteristics and didn't say *among others*. They did say
8 *include*. But, so, if you have those three, even if you
9 have others, that you qualify for preemption. That would
10 be my reading of that.

11 Q And what if you don't have anything else?

12 A As long as you have those three, then you would qualify
13 for preemption under the Order.

14 Q Okay. I guess I'm kind of struggling with that. Going
15 to Mr. Oliver's testimony that takes issue with, and it's
16 been fleshed out a bit here, with the applicant, the
17 acronym y'all are using; it talks about the location
18 specific aspect of the applicant's service versus what I
19 interpret as Vonage's portability aspect. I usually don't
20 reveal what my issues are here. I usually play it close
21 to the vest, but I have to say that in terms of, when I
22 read something and it says "*similar*" in terms of
23 characteristics and in terms of usability, the portability
24 aspect of what the Vonage product, the Digital Voice
25 offers, was glaring to me, and you don't have that

1 characteristic in terms of your offering. Help me with
2 that because, I mean, that's a big issue for me, to be
3 honest with you, in terms of what the similar
4 characteristics are that are undefined by the FCC.

5 A I think that the, unfortunately the only language that
6 the Order gives us for services that are like services or
7 other types of IP-enabled services are those three
8 criteria listed in paragraph 32. Then the FCC — I think
9 that, my reading of that paragraph is that you have
10 characteristics similar to the Vonage service if you have
11 the CPE in the home, the broadband connection and the
12 service offering that includes the integrated suite of
13 capabilities, et cetera. That's my reading of it.

14 Q Help me out with this footnote, and I am not an attorney,
15 and I've been out of school a long time. Footnote¹¹³,
16 going back to the 04-267, and I think you also read it,
17 line 2, and let me start off,

18 This network design also permits providers to
19 offer a single, integrated service that
20 includes both local and long distance calling
21 and a host of other features that can be
22 supported from national or regional data
23 centers and accessed by users across state
24 lines.

25
26 I'm having a hard time here, and I don't know if I'm
27 conveying my —

28 A I think that that's intended to say, and this is how Time

1 Warner Cable does it as well. We support our calling and
2 our features on a regional data center basis, meaning, as
3 I indicated earlier, we have soft switched devices, a
4 device in Raleigh that serves South Carolina, North
5 Carolina, and other states as well. And, that one device
6 can control the calling and the features provided to
7 customers across multiple states. I think that that's
8 what that sentence is going for or going to, and that
9 phrase, "and accessed by users across state lines", I
10 think that — this was from counsel for Cox
11 Communications, so I can't speak for the writer — but,
12 my interpretation of that is that the users are able to
13 access the features and functionalities and the service
14 despite having those being provided across state lines,
15 meaning that the switch may be located in Nebraska, the
16 user may be in Florida, but the user's nonetheless able
17 to access all those different features, the long
18 distance, local and the host of other features. That's my
19 reading of it.

20 Just to sort of maybe step back a little bit, this
21 Order, as we've discussed, is on appeal. When we make our
22 tariff filing, I think that it's possible, would be
23 appropriate if it's in the view of different parties for
24 that to be subject to a challenge. I'm not saying that it
25 would appropriate to challenge. I just think that in the

1 procedural context, that that's something that can
2 happen, certainly, until we do something and there's no
3 challenge to be made. But, we certainly understand that
4 that's a possibility, and we certainly understand that
5 it's also a possibility that a court will disagree with
6 this analysis. Our position today is that we fall within
7 this preemption analysis, and we'll have to see how it
8 plays out in the future. But, we will continue to abide
9 by whatever Court or Agency determinations are in place.

10
11 COMMISSIONER CLYBURN: Mr. Chair, I
12 know I run the risk of, again, being
13 objected to by Mr. Ellerbe, but I wanted
14 to read something — I guess he doesn't
15 have access to, which is totally unfair,
16 the news release — it's the FCC news
17 release that I made mention earlier which
18 again, as Ms. Patterson mentioned, usually
19 precedes the Order. On the fourth
20 paragraph of that, which they describe,
21 this is an unofficial announcement of a
22 Commission action. It tells you that you
23 can read the full context of the Order,
24 which constitutes the official action.

25 Paragraph 4 reads,

1 Acting on a Petition from Vonage
2 seeking federal preemption of an
3 order by the Minnesota Public
4 Utilities Commission, the FCC
5 found that the company's Digital
6 Voice service cannot practically
7 be separated into intrastate and
8 interstate components, precluding
9 dual state and regulatory regimes.
10 Digital Voice customers can use
11 their phones from a broadband
12 connection anywhere in the world
13 making it difficult to determine
14 whether a call is local, interstate,
15 or international in nature.
16

17 For my own benefit, selfish benefit,
18 I wanted that read to affirm a part of, I
19 guess my continued blurriness here as it
20 relates to this particular issue of — I'm
21 just looking at the preemption part of it.

22 Thank you for not standing up and
23 objecting. This is on the website. As long
24 as I've been here, I can't remember, what
25 do we usually say when we don't necessarily
26 enter a document — take judicial notice of
27 this particular press release.

28 CHAIRMAN MITCHELL: Thank you very
29 much, and we'll do that.

30 [JUDICIAL NOTICE TAKEN OF FCC NEWS
31 RELEASE]

32 CHAIRMAN MITCHELL: Any other
33 questions? Commissioner Hamilton.

EXAMINATION BY COMMISSIONER HAMILTON:

1
2 Q I've got one. I'd like to address customer service of
3 reliability. I too am a Time Warner Cable subscriber at
4 this time, and I have added a box. In your earlier
5 testimony you mentioned that the box that I have for my
6 cable that allows me to get movies and sports events and
7 whatnot is similar to the modem that you discussed. I
8 don't know if that's a fair statement.

9 A It's a different, it provides different functionalities
10 but it's similar in that it connects to our network and
11 to a TV versus a phone.

12 Q Would the reliability in service that you have for your
13 consumers for the Voice over Internet Protocol be at a
14 higher standard than the customers that have this
15 attached to the television? This is a secondary residence
16 that I have and usually when we're there it's a weekend.
17 It's not during Time Warner's normal business hours. So,
18 we get to talk to someone on the, someone somewhere. It's
19 awful hard to get service personnel to answer to it. You
20 have some real kind people that try to talk you through
21 how to get your television to work, but my experience and
22 the only way that I can get it to work is to take the
23 thing off and re-hook it up. What's going to happen when
24 I have a phone with a modem and can't get anyone other
25 than during normal business hours?

1 A Twofold question. First, on the customer service, the
2 customer service representatives and the availability,
3 those folks are located in South Carolina. They're not
4 located outside of the state. I will certainly make sure
5 to pass that along. We do have folks dedicated to Digital
6 Phone. I can't speak to exactly how long the answer times
7 are at that level, but we do endeavor to make sure that
8 we meet the answer times and make sure that customers
9 don't have to wait on the phone.

10 In terms of the technical ability of the service and
11 the quality of service, the phone service is provided
12 through a modem which is a different device than the
13 cable box. Also, the packet stream and the transmission
14 path is given priority over our network for the Voice.
15 That's not to say that it degrades the video or the high
16 speed. We have an enormous amount of capacity in our
17 network, which we've enhanced with fiber optics. But, the
18 telephone packets are given priority such that, for
19 instance, if a customer in a neighborhood picks up the
20 telephone to make a phone call and the next door neighbor
21 decides to download a Britney Spears video at the same
22 time, there would be a minute perhaps, even if necessary,
23 a slow down to the video that would be negligible to the
24 user. But, the phone packets would get priority. There's
25 quality of service embedded into the service that permits

1 those packets to get ahead in a traffic jam to ensure
2 voice quality.

3 Q Other than power outages, rate your service comparable to
4 land lines service. Do you think yours is equally as
5 good, better or how?

6 A I don't have any specific statistics with me today, but
7 what we hear from customers is that it's as good or if
8 not better and more clear than even the traditional
9 wireline service. I am a customer myself up North, so I
10 experience that myself.

11 Q Thank you very much.

12 CHAIRMAN MITCHELL: Commissioner

13 Moseley?

14 EXAMINATION BY COMMISSIONER MOSELEY:

15 Q Will you be able to use video conference calls, meetings
16 and everything?

17 A Ultimately that's something that we're certainly looking
18 to.

19 Q Explain to me on the chart up there, is this going to be
20 done through just your cable wire service or how is it
21 going to handle that if you're in another state? Then,
22 are you getting into the Internet?

23 A You mean on the phone side or just generally with all the
24 products?

25 Q Phone side.

1 A What we hope to do is to offer even more enhanced
2 functionalities with the telephone service. So, for
3 instance, you could get caller ID on your television set.
4 If you're watching TV and someone calls, it would flash
5 the name and telephone number on the TV set, video
6 conferencing where you could with another customer have a
7 video screen and be able to communicate video through the
8 telephone, things that really integrate the voice, the
9 data, and the telephone. Even things like when you're
10 watching a television show and it's a sports show and you
11 wanted to maybe press some buttons and have the Internet
12 come up on the bottom of the TV screen so you could look
13 at the statistics about that player or something. But,
14 really integrating the three services into one platform.

15 Q But, all of this will be done through the cable network,
16 not through Internet or anything like that?

17 A Through the Time Warner Cable managed cable network,
18 which is an Internet protocol network at this point.

19 Q So, it wouldn't be used — I'm going back to 58-9-10, (17)
20 where it talks about broadband service and delivery of
21 video — are you not sliding under the window a little
22 bit in there on that?

23 A Any service that is used to deliver video or to provide
24 access to the Internet, now, today we don't deliver video
25 using Internet protocol technology. We use traditional

1 cable technology, and it's not sent in packet form. It's
2 sent in a compressed video signal. You hear a lot about
3 IP video, and at some point we may start offering it. On
4 the Internet access side, I think our high speed data
5 service, our Road Runner brand service certainly is a
6 broadband service under this definition. I also think
7 that once we start offering enhanced services that
8 combine all three, then we would probably fall within
9 that definition.

10 Q The next question, Commissioner Hamilton was talking to
11 you about using your cable and television for telephone
12 service. But, if your cable goes out, you can't use your
13 telephone. What are you going to have to do, use a cell
14 phone to call the service operator to — and, I don't
15 mean that —

16 A Right. There are times when, because there's still
17 different platforms, although it's the same network, that
18 a cable television may go out because of a video problem
19 where the telephone service is up. The only time that we
20 can be assured that everything would go out is just as
21 with any other network if there's a fiber cut or there's
22 a cut in the network. But, just because cable television
23 goes out or the Internet goes out on the data side, that
24 does not mean that the voice goes down.

25 Q Thank you, ma'am.

1 A Um, hum.

2 CHAIRMAN MITCHELL: Any other
3 questions? [No response]

4 RE-EXAMINATION BY CHAIRMAN MITCHELL:

5 Q I have one more follow-up, and I know you might think I'm
6 beating a dead horse, but, I do want you to answer this.
7 What happens to the customers in rural areas that aren't
8 subscribers? What happens to their rates when supposedly
9 no one is serving their particular area? What would
10 happen to their rates under the scheme that we now have?

11 A That choose not to become Time Warner Cable customers and
12 stay with their incumbent?

13 Q Right or maybe don't have the option, don't have the
14 option to become subscribers?

15 A Well, the ones that are in a competitive area served by
16 Time Warner Cable and a rural LEC, it's unclear what
17 would happen to any of their rates. But, in that area, I
18 would think the rates could even potentially go down
19 because of the response to competition. The incumbent
20 LEC, and we've seen this is many, many markets, they
21 begin to lower their rates because we're offering a
22 competitive product, and the rates actually go down. In
23 the areas where —

24 Q But do you have stats to show us that?

25 A I may have anecdotal evidence.

1 Q Could you provide us some information?

2 A Yes, I mean I have anecdotal evidence, and again I'm not
3 sure that it's in any rural areas. But where, for
4 instance, the incumbent LEC begins to offer a bundled
5 service at a comparable price to ours in response.

6 Q I'd like to hold a late-filed exhibit for that if you
7 could provide that. I'd love to see that information.

8 A Okay. Again, I'm not, I can't be sure that it's in South
9 Carolina.

10 Q I don't believe we've had any exhibits. I'll hold that as
11 Exhibit #1, for late-filed Exhibit #1. Thank you.

12 [HEARING EXHIBIT #1 RESERVED]

13 A Just to follow up, with the customers that don't have the
14 ability to obtain Time Warner because they're not in our
15 franchised area, they may have competition from other
16 CLECs out there. If they don't then I don't think, I'm
17 not sure there would be any affect on their rates. I
18 can't speculate as to what would happen to those rates.

19 CHAIRMAN MITCHELL: Commissioner
20 Howard.

21 EXAMINATION BY COMMISSIONER HOWARD:

22 Q Good afternoon, Ms. Patterson. Do you have cable
23 penetration in all these five markets that the rural
24 LECs; is your cable penetrating in all those markets, do
25 you know?

1 A We serve all these markets. I can't tell you the exact
2 rate of penetration as compared to the [INAUDIBLE] that we
3 pass.

4 Q But, you had quoted St. Stephen, you do penetrate St.
5 Stephen's market?

6 A Um, hum.

7 CHAIRMAN MITCHELL: Any other
8 questions from Commissioners?

9 [No Response]

10 CHAIRMAN MITCHELL: If not, Mr.
11 Ellerbe, any redirect? And, at the same
12 time, Mr. Ellerbe, I believe a question
13 was asked the Chair, from Mr. Mustian,
14 during that exchange, so if you have any
15 clarification on that and would like to
16 respond, feel free.

17 MR. ELLERBE: Thank you, Mr. Chairman.

18 RE-DIRECT EXAMINATION BY MR. ELLERBE:

19 Q Ms. Patterson, let me follow up on a few things. First,
20 various people in this room would like me to clarify this
21 issue. You made reference to having, you talked a lot
22 about the proposed amendment to the tariff, and you
23 mentioned that that had been discussed with the
24 Commission Staff.

25 A I'm sorry. I mean the Office of Regulatory Staff.

- 1 Q Thank you very much.
- 2 A Lots of different names in lots of different states.
- 3 Q You made this point, but since it's been so much
- 4 discussion about it, I want to go to the fact, pin it
- 5 down. You expect, we will be filing a proposed amended
- 6 tariff, correct?
- 7 A Yes.
- 8 Q That will remove certain retail services?
- 9 A That's correct.
- 10 Q At that time, that will be submitted to this Commission
- 11 and ask them to approve that tariff, correct?
- 12 A That's correct.
- 13 Q I think you made reference to the fact that various
- 14 parties would have an opportunity at that time to
- 15 intervene and raise issues including ORS, correct?
- 16 A That's correct.
- 17 Q Is it your understanding that that would be the time that
- 18 the issue about the scope of the Vonage Order preemption
- 19 would be addressed?
- 20 A I think so. I think it's not an issue in this
- 21 certification proceeding in that it's addressed really to
- 22 how we operate as a retail provider and how we file
- 23 tariffs, et cetera.
- 24 Q But, we will be coming to, well, let me try not to lead
- 25 quite so badly. Will Time Warner, I'm just going to say

1 Time Warner, will Time Warner come to this Commission
2 with that tariff filing and ask this Commission to
3 approve that tariff?

4 A Yes, it will be a formal request to have a tariff
5 amendment approved.

6 Q In your view, in the company's view, does the Commission
7 need to address that issue in the context of this
8 application for the relief we're asking the Commission to
9 give us today?

10 A No, we seek full authority as a full-fledged CLEC in
11 these areas to provide telecommunications services in
12 this proceeding.

13 Q Let me follow up on paragraph 21.

14 A You mean page 21?

15 Q Yes, exactly. I don't want to belabor this because of the
16 point that was just made, but Commissioner Clyburn asked
17 you about footnote¹¹³. Is it your understanding that
18 footnote makes reference to a number of different filings
19 by cable TV companies?

20 A [Examining] That's correct. I'm looking at it now.

21 Q Is it your understanding that in those filings, did the
22 cable TV companies in those filings describe their
23 services that they were offering?

24 A Yes, they described in great detail the service offerings

1 that they provided using VoIP technology.

2 Q Does footnote¹¹³ support one way or another your view as
3 to whether or not the Vonage preemption applies to the
4 services that you and Mr. Bowen spent so much time
5 talking about?

6 A Yes. My view is that it provides additional support for
7 the conclusion that cable operators that provide VoIP
8 services as described in the Order would be subject to
9 the same preemption order by the FCC.

10 Q Thank you, Ms. Patterson.

11 MR. ELLERBE: I have no further
12 redirect.

13 CHAIRMAN MITCHELL: Thank you. Thank
14 you very much. Mr. Bowen?

15 MR. BOWEN: I've got a few follow up
16 here.

17 CHAIRMAN MITCHELL: Specifically to
18 what he just asked?

19 MR. BOWEN: Yes.

20 CHAIRMAN MITCHELL: Yes, sir.

21 MR. BOWEN: Mr. Chairman, before I
22 start, I've talked to the Court Reporter,
23 and I've talked to the attorneys during
24 the previous break. What we'd like to do

1 is go ahead and reserve an exhibit number,
2 and I think this was okay with Mr. Ellerbe
3 and talking with Ben as well. What we will
4 do is we will take the information on the
5 board and recopy it for an exhibit. The
6 attorneys will get together to be sure
7 that it adequately and appropriately
8 reflects what is actually on the board. I
9 think there was so much time discussed in
10 the record with respect to that. I think
11 it is going to be helpful for the record,
12 the Court Reporter and others to be able
13 to see that.

14 CHAIRMAN MITCHELL: Yes, sir, and
15 we'll hold that open for Exhibit#2. I hear
16 no opposition to that.

17 [HEARING EXHIBIT #2 RESERVED]

18 COMMISSIONER CLYBURN: Mr. Chairman,
19 if we're talking about by way of digital
20 technology, a digital camera probably
21 would take care of that, but it's just an
22 observation.

23 MR. BOWEN: Frankly, you're right.
24 That's what MaryJane suggested, and I
25 think she's already taken a picture of it.

1 It may be we just use the picture,
2 whatever works. You're right, though.

3 RE-CROSS EXAMINATION BY MR. BOWEN:

4 Q As far as the, I think Mr. Ellerbe asked as far as the
5 scope of this proceeding with respect to the issues of
6 the Vonage Order. I think he referred you to page 20 or
7 paragraph 21, which one? Yes, page 21 of the Order. Is
8 that correct?

9 A Yes.

10 Q With respect to that Order and with respect to whether or
11 not the scope is included here, would you look at page 21?

12 A [Examining] Okay.

13 Q Some of this is to go back and to talk about what a
14 Commissioner up there also talked about. With respect to
15 the footnote down there, I think she mentioned on
16 footnote¹¹³, it said a certain statement. But, if you go
17 down, she mentioned, "*this network design also permits*
18 *providers*", etcetera. Then if you go down a couple of
19 lines beyond where she stopped, there also is a thing,
20 "*there are no facilities at the local level of a managed*
21 *voice over IP network that can perform these functions*".
22 You see that statement as well?

23 A [Examining] I do.

24 Q Here you have a managed voice network at the local level,

1 do you not?

2 A We have a network that carries voice signals, but our
3 network is similar to that described in this, in fact
4 that specific sentence in which all of the different
5 functions that they're talking about. If you look above
6 it, it's talking about call announcements, recordkeeping,
7 CALEA, voicemail and other features such as *67,
8 conferencing and call-waiting. All those are controlled
9 in Raleigh, North Carolina and not in Columbia, by our
10 soft switch. All of those functions and capabilities are
11 provided not locally but, in fact, across state lines.

12 Q Okay. Now, with respect to that, talking about across
13 state lines, did I understand your testimony to be that
14 with respect to the — you could distinguish jurisdiction
15 between intrastate and interstate now, is that not
16 correct?

17 A That's correct. That's how we, in fact, know how to pay
18 the appropriate intercarrier compensation.

19 Q Going back again to what Commissioner Clyburn said with
20 respect to the news release that she mentioned, if you
21 would, and I'll draw your attention to paragraph 31 on
22 page 21. And I would invite the Commissioners to look at
23 that paragraph on page 21, paragraph 31. It goes on to
24 say there,

25

1 There is, quite simply, no practical way to
2 sever Digital Voice into interstate and
3 intrastate communications that enables the
4 Minnesota Vonage Order to apply only to
5 intrastate calling functionalities without
6 also reaching the interstate aspects ... nor
7 is there any way for Vonage to choose to avoid
8 violating that order if it continues to offer
9 Digital Voice anywhere in the world.

10
11 Then it goes on to say — so basically, I think what the
12 Commission, or is it not true that the Commission
13 basically is saying there that Vonage can go anywhere,
14 it's portable, you don't know where necessarily the
15 things are so, therefore, the calls — or it's hard to
16 distinguish interstate, intrastate because you don't know
17 where the locations are?

18 A I think that's what they're saying about Vonage, but I
19 also think that they're talking about the full range of
20 features, functionalities, and capabilities that do cross
21 state lines and not simply jurisdiction of an individual
22 call, such as we just discussed with respect to features
23 and functionalities being accessed across state lines and
24 not knowing necessarily where a specific soft switch in
25 one location being able to provide those functionalities
26 to multiple states.

27 Q I understand. Going back to again, page 21, there was a
28 discussion there with you, I think Commissioner Clyburn,
29 with respect to the three basic characteristics, is that
30 right?

1 A That's correct.

2 Q With respect to the first one, a requirement for
3 broadband connection, would you agree that that begins,
4 its genesis, if you will, back on page 3 of the Order —

5 MR. ELLERBE: Mr. Chairman?

6 CHAIRMAN MITCHELL: Yes, sir.

7 MR. ELLERBE: I hate to bring this to
8 a close, but I think this is beyond the
9 scope of my limited redirect examination.
10 This is following up on issues that Mr.
11 Mustian first raised and then Commissioner
12 Clyburn raised.

13 MR. BOWEN: I was raising it for a
14 clarification with respect to what
15 Commissioner Clyburn was talking about.
16 Again, that she was talking about that
17 first characteristic, and I think that
18 that first characteristic really is,
19 begins on page 3, in paragraph 5,
20 particularly in the first sentence.

21 CHAIRMAN MITCHELL: We feel like as
22 long as you stay specifically, Mr. Bowen,
23 to any remarks that a Commissioner has
24 made in his line of questioning, you're
25 okay.

1 MR. BOWEN: Yes, sir. Yes, sir.

2 Q [Mr. Bowen] I think Commissioner Clyburn talked about
3 that and if you'll look at page 3, paragraph 5, it says:

4 First, Vonage customers must have access to a
5 broadband connection to the Internet to use
6 the service.
7

8 And then it goes on to talk about — would you not agree
9 that that paragraph is the genesis of the part where the
10 Commission is starting to now start to consolidate those
11 things, and that's where on paragraph 32, that's where
12 that first phrase of the three-prong test come from?

13 A I think that it has its genesis in multiple places even
14 with the definition of broadband. So, I probably have to
15 go through it a little more detailed. But, it seems to be
16 there that's the first time in the Order that the FCC
17 mentions the broadband connection. That's my quick
18 reading of it.

19 Q And, it does mention a connection to the Internet?

20 A Yes, in the footnote, it defines.

21 Q I understand. As far as the scope, and Mr. Ellerbe
22 brought this up, with respect to the scope of looking at
23 the Vonage Order, if this Commission were to grant what
24 you're asking for today, then if you withdraw it —
25 basically if the Commission were to grant what you're
26 asking today, is it not true that or is it true that MCI,
27 through its arbitration, could go ahead and have an

1 interconnection agreement assuming the arbitration is
2 approved here. Could MCI go ahead and grant or provide
3 service to you in the rural areas without you ever having
4 to come back here?

5 A Just to make sure I understand the question. I think that —

6 Q You want me to rephrase?

7 A Yes, if MCI's arbitration is successful and it obtains
8 interconnection, we can provide service in the areas at
9 issue today. That's not related to this proceeding.

10 Q Let me make sure I'm clear.

11 A We discussed this on your original cross examination.

12 Q Let's do it one more time because I want to make sure I'm
13 clear and everybody else is clear as well. So, if the
14 Commission grants the certificate that you're asking for
15 today in the form in which you now currently have it
16 before the Commission and the Commission decides the MCI
17 arbitration case, so that now the companies have
18 interconnection agreements with MCI, then at that point,
19 you can provide, you will be able to provide service
20 without anything else. And you could, or at least your
21 position, you could provide service within the five areas
22 without doing anything else?

23 A I actually disagree that both components are necessary. I
24 stated earlier in response to a similar question that if
25 the arbitration between MCI and the companies that its

1 arbitrating with is successful and there's an inter-
2 connection agreement that results from that arbitration,
3 we could offer service in those areas without any
4 additional ruling from this Commission. What we seek
5 through this proceeding is the ability on our own, as
6 full-fledged telecommunications carriers to obtain
7 interconnection agreements on our own. So, I don't think
8 that there are two prerequisites to our offering service
9 today in those areas. I think if MCI gets
10 interconnection, then we can begin offering service
11 without regard to this certification proceeding.

12 Q I'm confused, and I'm probably the only one. So, are you
13 saying, assuming MCI had the interconnection agreement
14 today, that you could begin providing service in those
15 areas today regardless of whether this Commission took
16 action on the certificate?

17 A Yes, and of course, subject to the withdrawal of our
18 retail portion of the tariff. If that were approved, then
19 yes. But, it's not related to this certification unless
20 the Vonage Order were overturned or someone ruled that
21 our reading of that Order is incorrect and that we needed
22 certification.

23 Q So, if the Commission does not look at the Vonage Order
24 in this proceeding and determine whether or not the
25 Vonage Order applies, if it does decide — well, do you

1 think it does apply? Do you think the Vonage Order does
2 apply?

3 A To our services?

4 Q Yes.

5 A Yes, I've made that clear today.

6 Q Therefore, your position before this Commission is that
7 the Commission is preempted, which means that you could
8 take this service and provide it in our service areas
9 today?

10 A If we have interconnection, which is dependent upon a
11 successful arbitration between MCI and the companies at
12 issue and/or Time Warner Cable on its own obtaining
13 interconnection agreements which it cannot do without a
14 certification.

15 Q Let's assume for the sake of discussion this Commission
16 does not believe that the Vonage Order applies. Then, in
17 that case, and they rule that way, then in that case, if
18 they rule that way now in this proceeding then in that
19 case, you wouldn't be able to provide service in those
20 areas unless under some other action here or the FCC or
21 wherever?

22 A If they ruled that the Vonage preemption did not apply to
23 us but granted our certification, then we would still be
24 able to provide service because we would be certificated,
25 and we would abide by that rule.

1 Q How about the rural exemption at that point?

2 A If there's interconnection between MCI and the companies
3 at issue wherein the rural exemption was not invoked or
4 needed to be pierced and the issues relating to MCI's
5 provision of wholesale services to Time Warner were
6 successfully arbitrated by MCI and there's an inter-
7 connection agreement, then we would provide service. If
8 we, Time Warner Cable, as a certificated entity,
9 requested interconnection from the rural companies then
10 they would have the opportunity although there'd be some
11 argument that the exemption would have been waived at
12 that point. That would be the appropriate time for them
13 to invoke any rural exemption that they have.

14 Q Again, to be clear as far as the proceeding here, we're
15 talking about Digital Phone, not whether your cable TV or
16 your modem to the Internet, whatever applications there
17 are with respect to those two. But, we're talking about
18 before this Commission today is approval of the Digital
19 Phone tariff and your application as it applies to the
20 Digital Phone. Is that not correct?

21 A That's true. Really what we're talking about is the
22 ability for Time Warner Cable Information Services to be
23 able to file a tariff that proposes to offer tele-
24 communications services interexchange and local and to
25 obtain interconnection agreements. The tariff as it

1 stands today does contain a Digital Phone aspect to it,
2 but we were really to become, as we've indicated in our
3 amendments to the testimony, a telecommunications carrier
4 plain and simple.

5 Q So, the answer to my question is yes?

6 MR. ELLERBE: I'll object to that. I
7 think she answered the question, Mr.
8 Chairman.

9 Q The short answer to my question is yes?

10 A I don't recall exactly the way the question was phrased.

11 MR. BOWEN: No further questions.

12 CHAIRMAN MITCHELL: Thank you. Mr.
13 Mustian?

14 MR. MUSTIAN: No further questions.

15 CHAIRMAN MITCHELL: You may step down.
16 We're going to take one hour for lunch,
17 and we'll get back here at 2:45.

18 [Luncheon Recess]

19 CHAIRMAN MITCHELL: We will call this
20 hearing back to order. Mr. Bowen.

21 MR. BOWEN: We call Emmanuel
22 Staurulakis.

23 WHEREUPON, Emmanuel Staurulakis,
24 first being duly sworn, assumes the stand
25 and testifies as follows:

1 DIRECT EXAMINATION BY MR. BOWEN:

2 Q Please state your name, where you are employed and in
3 what capacity, please.

4 A Yes, my name is Emmanuel Staurulakis. My business address
5 is 7852 Walker Drive, Suite 200, Greenbelt, Maryland
6 20770. I am President of John Staurulakis, Inc.

7 Q Mr. Staurulakis, did you have cause to be prefiled in
8 this proceeding some 14 pages of prefiled testimony in
9 question and answer form?

10 A I did.

11 Q Are there any additions, corrections or modifications to
12 that testimony today?

13 A No, there are not.

14 Q If I were to ask you those questions today, would your
15 responses be the same?

16 A I would.

17 MR. BOWEN: Mr. Chairman, we'd like to
18 have his testimony placed in the record as
19 if orally testified to from the stand.

20 CHAIRMAN MITCHELL: We'll do that, Mr.
21 Bowen. It'll be read into the record as if
22 given orally.

23
24 [PREFILED DIRECT TESTIMONY OF

25 EMMANUEL STAURULAKIS FOLLOWS]:

1 **SOUTH CAROLINA TELEPHONE COALITION**
2 **TESTIMONY OF EMMANUEL STAURULAKIS**
3 **BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**
4 **DOCKET NO. 2004-280-C**

5

6 **Q. Please state your name and business address.**

7

8 **A. My name is Emmanuel Staurulakis. My business address is 7852 Walker**
9 **Drive, Suite 200, Greenbelt, Maryland 20770.**

10

11 **Q. By whom and in what capacity are you employed?**

12

13 **A. I am President of John Staurulakis, Inc. (JSI) a telecommunications consulting**
14 **firm providing a full range of financial, regulatory and management consulting**
15 **services to independent telecommunications providers throughout the nation.**

16

17 **Q. Please briefly outline your education, training and experience in the**
18 **telephone industry.**

19

20 **A. In 1980, I received a Bachelor's degree in Business Administration from the**
21 **American University, Washington, D.C. From May 1980 until December**
22 **1984, I worked at JSI as a Cost Separations Consultant. My responsibilities**

1 included preparing jurisdictional toll cost separations studies for clients in
2 several states.

3 In December 1983, I earned a Masters degree in Accounting from the
4 George Washington University, Washington D.C. In January 1985, I became a
5 Supervisory Consultant responsible for the overall preparation and submission
6 of numerous jurisdictional toll cost separations studies, rate case work, and
7 intrastate tariff filings for a number of JSI clients.

8 In November 1987, I was promoted to Director of the Separations
9 Department. In October 1992, I was promoted to Vice President of Operations
10 and given day to day responsibility for all financial and regulatory matters
11 affecting our clients. I am also a member of the National Exchange Carrier
12 Association's (NECA) Universal Service Fund Committee.

13 In July of 1997, I was promoted to my current position of President.
14

15 **Q. On whose behalf are you testifying in this case?**

16
17 **A.** I have been requested to testify on behalf of Farmers Telephone Cooperative,
18 Inc., Fort Mill Telephone Company, d/b/a Comporium Communications, Inc.,
19 Home Telephone Company, Inc., PBT Telecom, Inc., St. Stephen Telephone
20 Company (the "Rural LECs") and the South Carolina Telephone Coalition
21 ("SCTC"), an informal organization of incumbent local exchange carriers
22 ("ILECs") certified in the State of South Carolina. The SCTC member
23 companies are listed in Exhibit A.

1 Q. What is the purpose of your testimony?

2

3 A. The purpose of my testimony is to demonstrate that the decision by the Federal
4 Communications Commission ("FCC") in the case of Vonage Holdings¹, LLC
5 ("Vonage") does not pre-empt the authority of the South Carolina Public
6 Service Commission ("Commission") to act upon the request by Time Warner
7 Cable Information Services (South Carolina), LLC ("TWCIS") to expand its
8 certificated authority to include areas served by the Rural LECs. As the request
9 being made by TWCIS is ambiguous and unclear as to intent, the Commission
10 should utilize its authority and deny the application for expanded authority.
11 Moreover, given the potential adverse impact that TWCIS's voice over internet
12 protocol ("VoIP") service offering may have on the availability of affordable
13 local exchange service² to all rural telecommunications customers in the state,
14 the Rural LECs respectfully request that the Commission deny the TWCIS
15 application.

¹ See FCC Memorandum Opinion and Order in WC Docket No. 03-211, released November 12, 2004 in the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission.

² See S.C. Code Ann. Section 58-9-280(B) the Commission can deny an application for certification unless it finds that the service to be provided will not adversely impact the availability of affordable local exchange service and the provision of the service will not otherwise adversely impact the public interest.

1 Q. Does the FCC's decision in the Vonage proceeding pre-empt the authority
2 of the Commission in this proceeding?

3

4 A. No. In its Vonage decision, the FCC simply addressed the jurisdictional
5 question as it applied to a specific service called DigitalVoice and any like-type
6 services. Much to the chagrin of at least one FCC Commissioner³ taking part
7 in the Vonage proceeding, the FCC did not address many of the pressing issues
8 and ramifications associated with the deployment of IP-based services. The
9 FCC concluded that Vonage's DigitalVoice service is an interstate service and
10 subject to the regulations of the FCC, not the state commissions. Accordingly,
11 the FCC ruled that DigitalVoice service and services having the same
12 characteristics as DigitalVoice are exempt from state commission certification,
13 tariff and other related requirements.

14 In reaching its decision, the FCC examined the fundamental differences
15 between an IP-based service like DigitalVoice and traditional telephone service
16 provided via the circuit-switched network. The fundamental differences cited
17 by the FCC with regard to DigitalVoice service include: 1) Portability; 2) Use
18 of specialized customer premise equipment ("CPE"); 3) Ability of customers to
19 manage their communications dynamically; and 4) Numbers assigned from the

³ See Vonage Order, concurring statement of Jonathan S. Adelstein "Where this Order falls short is its failure to account in a meaningful way for essential policy issues, including universal service, public safety, law enforcement, consumer privacy, disabilities access, and intercarrier compensation, and the effect of our preemption here".

1 North American Numbering Plan ("NANP") are not necessarily tied to the
2 DigitalVoice user's physical location.⁴

3
4 **Q. Does the service provided by TWCIS share the same characteristics as the**
5 **DigitalVoice service addressed by the FCC in the Vonage Order?**

6
7 **A. The TWCIS service as described in Ms. Patterson's testimony does not appear**
8 **to be a like-kind service that would be considered exempt from Commission**
9 **regulation in accordance with the FCC's findings contained in the Vonage**
10 **order. For example, TWCIS's service does not appear to be portable to the**
11 **customer using it. In other words, the service can only be utilized by the**
12 **customer in his or her home or wherever TWCIS has its broadband connection**
13 **located. In addition, it does not appear that a customer utilizing TWCIS's**
14 **service needs any specialized CPE.**

15
16 **Q. Did the Vonage Order finalize issues regarding the obligations of IP-based**
17 **service providers, including VoIP providers, to contribute to the federal**
18 **universal service funds and pay access charges?**

19
20 **A. No. The FCC's decision in the Vonage proceeding only pre-empts the**
21 **Minnesota Public Utilities Commission (and all other state commissions) from**
22 **requiring Vonage's DigitalVoice service and other *like* services from state**

⁴ See Vonage Order at paragraphs 5 – 9.

1 certification and tariffing requirements. In other words, the Vonage Order
2 simply addressed the jurisdictional question for DigitalVoice and like-type
3 services.⁵

4 To date, the FCC has not addressed the issues of whether or not IP-
5 based service providers are subject to the payment of access charges and
6 universal service fund contributions. Many IP-based service providers take the
7 position that their voice service offerings constitute an information service, not
8 subject to the payment of access charges or universal service fund
9 contributions. The FCC did issue a notice of proposed rulemaking back on
10 March 10, 2004⁶, seeking industry input on a number of IP-based service
11 related matters including the obligation of IP-based service providers to pay
12 access charges and contribute to the federal universal service programs. To
13 date, no action has been taken by the FCC with regard to the issues raised in
14 the notice.

15

16 Q. Does it appear from Ms. Patterson's testimony that TWCIS intends to
17 provide VoIP service on a non-regulated basis?

18

19 A. Yes. On page 5 of her testimony, Ms. Patterson states that TWCIS intends to
20 withdraw its retail VoIP service offerings contained in its current tariff once a

⁵ See Vonage Order, paragraph 44 "We emphasize that while we have decided the jurisdictional question for Vonage's DigitalVoice here, we have yet to determine final rules for the variety of issues discussed in the *IP-Enabled Services Proceeding*."

⁶ See FCC Notice of Proposed Rulemaking, In the Matter of IP-Enabled Services, WC Docket No. 04-36, released March 10, 2004.

1 new, non-regulated entity is created. She then goes on to indicate that TWCIS
2 will remain a certificated carrier that will obtain interconnection from the Rural
3 LECs and offer wholesale services to the new, non-regulated entity.

4
5 **Q.** Based on the testimony provided by Ms. Patterson on page 5, is it clear to
6 you what TWCIS is seeking from the Commission?

7
8 **A.** No, it is not clear to me what TWCIS is seeking from the Commission. On the
9 one hand, TWCIS indicates that it will voluntarily comply with all applicable
10 rules of the Commission, at least until such time as all appeals associated with
11 the Vonage proceeding have been decided. On the other hand, TWCIS intends
12 to move its retail VoIP services to a non-regulated entity where I presume these
13 services will no longer be bound by Commission rules and regulations. It
14 would appear that TWCIS wants to have its cake and eat it too. By agreeing to
15 voluntarily comply with Commission rules and regulations, TWCIS hopes to
16 receive its expanded authority as a telecommunications provider. Having such
17 authority will allow it to seek interconnection with the Rural LECs and request
18 local number portability ("LNP"). Once it obtains interconnection and LNP,
19 TWCIS will then offer a wholesale VoIP service to the newly created non-
20 regulated entity that will then sell VoIP service to retail customers, without
21 having to worry about complying with any Commission rules or regulations.

22

1 Q. Hasn't TWCIS agreed to abide with all applicable rules regarding the
2 collection of universal service fund charges, taxes, reporting requirements,
3 911 services and existing service standards established by the
4 Commission?

5

6 A. Ms. Patterson states on page 6 of her testimony that TWCIS will voluntarily
7 comply with all applicable Commission rules while the Vonage Order is
8 currently being appealed. However, it appears that TWCIS only intends to
9 voluntarily comply with applicable Commission rules and regulations while it
10 is convenient for them to do so.

11

12 Q. Should the Commission allow TWCIS to obtain the benefits of
13 certification when TWCIS has made it clear that it plans to offer its
14 service on a non-regulated basis?

15

16 A. No, the Commission should deny the request made by TWCIS for expanded
17 authority on the basis that TWCIS has no intention of abiding by Commission
18 rules and regulations.

1 Q. Are there other reasons why the Commission should deny the request by
2 TWCIS for expanded authority?

3
4 A. Yes. The failure by TWCIS to meet the state public interest standard is a major
5 reason why the Commission should deny the request by TWCIS for expanded
6 authority. The Commission has the authority to deny an application for
7 certification if the service to be provided will have an adverse impact on the
8 availability of affordable local exchange service and the provision of the
9 service will otherwise adversely impact the public interest. TWCIS has not
10 demonstrated in its application that the provision of its VoIP service will not
11 adversely impact the availability of affordable local exchange service to all
12 subscribers residing in the service areas of the Rural LECs.

13
14 Q. How will the introduction of a VoIP service offering by TWCIS adversely
15 impact the affordability of local exchange service in the areas served by
16 the Rural LECs?

17
18 A. The introduction of a VoIP service offering by TWCIS will likely have an
19 impact on the level of network access and universal service revenues received
20 by the Rural LECs, requiring the affected companies to consider raising local
21 rates to those subscribers that may never have access to TWCIS's VoIP service.
22 The TWCIS facilities being utilized to provide cable television service today
23 and VoIP service tomorrow are located in the more densely populated areas of

1 the Rural LEC serving areas. The access revenues derived from traditional toll
2 calls originated by subscribers residing in the more densely populated areas of
3 each rural serving area are instrumental in maintaining affordable basic local
4 exchange rates for the remaining rural subscribers in those areas. In essence,
5 the IP-based service being proposed by TWCIS may result in a form of rural
6 "creamskimming".⁷

7 One can look at the service area of Farmers Telephone Cooperative,
8 Inc., ("FTC") to view the potential for rural creamskimming. FTC's service
9 area is comprised of seventeen wire centers serving approximately 57,000
10 residential and business subscribers covering a service area of approximately
11 2,600 square miles. TWCIS currently has an extensive network built-out to
12 four of FTC's densest wire centers. These four wire centers comprise only
13 15% of FTC's geographic service territory but account for approximately 41%
14 of FTC's subscribers or about 59 subscribers per square mile. TWCIS has
15 relatively minor or no facilities in FTC's remaining thirteen wire centers that
16 comprise approximately 85% of the company's service territory and 59% of the
17 subscribers or about 15 subscribers per square mile.

18 With regard to Fort Mill Telephone Company, TWCIS currently has
19 facilities only in select residential developments along the growing US
20 highway 521 and SC highway 160 corridors.

⁷See FCC Memorandum Opinion and Order. In the Matter of Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia. CC Docket No. 96-45, released January 22, 2004, footnote 102
"Creamskimming" refers to the practice of targeting only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area.

1 Q. Do the Rural LECs cited in the TWCIS application rely on network access
2 and universal service support revenue for a significant portion of their
3 regulated revenues?
4

5 A. Yes. In calendar year 2003, access and universal service fund revenues for the
6 five Rural LECs was approximately \$62.5 million or approximately 50 percent
7 of total regulated revenues. On a monthly access line basis, the \$62.5 million
8 represents approximately \$41 per access line, per month. Based on existing
9 tariff rates for basic local exchange service, it is clear that subscribers residing
10 in the areas served by the Rural LECs do not pay anywhere near \$41 per month
11 for basic local exchange service. However, the \$41 per month includes
12 contributions associated with years of regulated social pricing policies in order
13 to insure that all South Carolinians have access to affordable basic local
14 exchange service. In the case of residential rate payers in South Carolina, the
15 weighted average rate for basic local exchange residential service is less than
16 \$15 per month (excluding the federal subscriber line charge). In the event that
17 a rural ratepayer replaces his or her existing telephone service with an IP-based
18 service offering such as that currently being offered by TWCIS in non-rural
19 areas of the state, much of the \$41 contribution will eventually disappear
20 thereby leaving rural ILECs with very few choices but to raise rates for basic
21 local exchange service to existing subscribers and/or seek additional high cost
22 funding from either state or federal universal service programs.
23

1 Q. Does Ms. Patterson offer any specific evidence to support the statement on
2 page 10 of her testimony regarding how TWCIS' service meets the state
3 public interest standard?
4

5 A. No. On page 10 of her testimony, Ms. Patterson states that competition serves
6 the public interest by bringing about lower rates, improved quality of service,
7 and enhanced services. Nowhere in her testimony does Ms. Patterson offer any
8 statistics to show that the rates for TWCIS's service would be lower than the
9 tariff rates being charged by the Rural LECs today. In accordance with page 9
10 of Ms. Patterson's testimony, TWCIS' monthly rate for VoIP service is \$39.95
11 to \$49.95 *plus* the cost of high speed data service and/or video service.
12 Compared to the Rural LECs' current average tariff rate of approximately
13 \$14.35 for basic local exchange service, only those customers with monthly toll
14 bills averaging between \$20 and \$30 or more would appear interested in
15 TWCIS's voice service offering.

16 In addition, there is no proof offered that the quality of the TWCIS
17 service will be an improvement over the high quality service provided to rural
18 subscribers today. Moreover, once TWCIS moves its retail service offering to
19 a new, non-regulated entity, the Commission will have no way of monitoring
20 the quality or price of the service.

21 Clearly, TWCIS has not met the burden of proof that its offering of
22 VoIP service to selected subscribers residing in areas currently served by the
23 Rural LECs will not adversely impact the availability of affordable local

1 exchange service and the provision of the service will not otherwise adversely
2 impact the public interest. The only reference with regard to meeting the
3 public interest standard offered by Ms. Patterson can be found on page 10 of
4 her testimony where she states that "TWCIS' application will serve the public
5 interest by allowing South Carolina residential consumers in ILECs' service
6 areas to have access, in many cases for the first time, to a facilities-based
7 competitive local telephone service." Ms. Patterson appears to ignore the fact
8 that most, if not all of the subscribers residing in the areas served by the Rural
9 LECs already have access to a competitive service, wireless. As the FCC
10 stated in a 2004 proceeding⁸ "the value of increased competition, by itself, is
11 not sufficient to satisfy the public interest test in rural areas."

12

13 **Q. What would you have the Commission do in regard to this proceeding?**

14

15 **A.** The Rural LECs and SCTC respectfully request that the Commission deny the
16 request made by TWCIS for authority to expand its certificated authority to
17 include the service areas of the Rural LECs. The Rural LECs and SCTC are
18 not opposed to the introduction of new technologies in the more rural areas of
19 the state. However, the Rural LECs and SCTC are unclear as to the reason why
20 TWCIS is seeking Commission approval when it appears that TWCIS intends
21 to move its retail VoIP service offering to a new, non-regulated entity. By

⁸ See Virginia Cellular Order, para. 4.

1 denying the application, the Commission will affirm that TWCIS cannot play
2 both sides of the issue.

3 Moreover, TWCIS has not met its burden of proving that the
4 introduction of its VoIP service offering to selected subscribers residing in
5 rural areas will not adversely impact the availability of affordable local
6 exchange service and the provision of the service will not otherwise adversely
7 impact the public interest. Ms. Patterson's testimony leaves the impression
8 that the FCC's jurisdictional decision in the Vonage order addresses all
9 pending social, technical and compensation matters associated with IP-based
10 service offerings. To the contrary, the FCC still has much to do in the areas of
11 universal service, intercarrier compensation, and 911 service issues related to
12 IP-based services. Until the FCC and perhaps Congress provide additional
13 guidance on these critical issues, the Commission should deny the request of
14 TWCIS. Otherwise, the continued availability of affordable basic local
15 exchange service may be in jeopardy for all South Carolinians.

16

17 **Q. Does this conclude your testimony?**

18

19 **A. Yes, it does.**

1 Q Mr. Staurulakis, you also have an exhibit A to your
2 testimony which lists the various companies that are in a
3 coalition. Was that prepared by you or under your
4 direction?

5 A Yes, it was.

6 MR. BOWEN: We would like to have that
7 placed in the record as the next hearing
8 exhibit.

9 CHAIRMAN MITCHELL: Without
10 opposition, then that will be Hearing
11 Exhibit #3 and entered into the evidence
12 of this case.

13 [HEARING EXHIBIT #3 ACCEPTED INTO
14 EVIDENCE]

15 Q [Mr. Bowen] Would you please give the Commission a
16 summary of your testimony?

17 A Yes. Good afternoon, I'm here today representing five
18 rural LECs, Farmers Telephone Cooperative, Inc., Fort
19 Mill Telephone Company d/b/a Comporium Communications,
20 Inc., Home Telephone Company, Inc., PBT Telecom, and St.
21 Stephen Telephone Company, collectively referred to as
22 the rural LECs and the South Carolina Telephone Coalition
23 or SCTC.

24 The rural LECs and SCTC are very much concerned
25 about the impact that Time Warner Cable Information

1 Services, LLC for Time Warner's Voice over Internet
2 Protocol or VoIP service will have on the ability of the
3 companies to continue to provide and for rural
4 subscribers to continue to receive access to affordable
5 basic local exchange service.

6 The request by Time Warner to expand its certificated
7 authority to include the service areas of the rural LECs
8 is ambiguous and unclear as to intent. On the one hand,
9 Time Warner indicates that it will voluntarily comply
10 with all applicable rules of the Commission, at least for
11 a limited period of time. On the other hand, Time Warner
12 indicates its intent to move its retail VoIP service to a
13 non-regulated entity as soon as the new entity is created.
14 Once its retail VoIP service is offered on a non-
15 regulated basis, Time Warner will apparently no longer
16 comply, or will comply only on a temporary basis, with
17 any Commission rules and regulations. By seeking
18 authority to expand its service into the rural LECs'
19 serving areas at this time, Time Warner hopes to obtain
20 status as a telecommunications provider, thereby allowing
21 it to seek interconnection with the rural LECs and obtain
22 local number portability in order to provide its service.

23 In justifying its ability to remove its existing
24 retail service offering from Commission mandated tariff
25 and certification requirements, Time Warner relies on its

1 interpretation of the FCC's November, 2004 Memorandum
2 Opinion and Order in the matter of Vonage Holdings
3 Corporation's Petition for Declaratory Ruling. Time
4 Warner believes that the Vonage Order preempts the
5 Commission from regulating its VoIP service offering with
6 regard to certification and tariff filing requirements.
7 The rural LECs believe that the Vonage Order preempts
8 Commission authority only with respect to other like
9 service offerings that have characteristics similar to
10 the DigitalVoice service offering provided by Vonage and
11 as described in the Order. Time Warner's VoIP service is
12 more like traditional telephone service and does not have
13 the same characteristics as the Vonage service.
14 Accordingly, the rural LECs believe that the Commission
15 has authority to deny the Time Warner application.

16 Moreover, and in accordance with S.C. State Law
17 Section 58-9-280(B), the South Carolina Commission has
18 the authority to deny an application for certification
19 unless it finds that the service to be provided will not
20 adversely impact the availability of affordable local
21 exchange service, and the provision of the service will
22 not otherwise adversely impact the public interest. Time
23 Warner does not offer any evidence that its VoIP service
24 offering will not adversely impact the availability of
25 affordable local exchange service, and the provision of

1 the service will not otherwise adversely impact the
2 public interest. Instead, Time Warner makes only a general
3 statement that the public interest is served because it
4 is offering a facilities-based competitive local tele-
5 phone service. The FCC has previously remarked that the
6 value of increased competition by itself is not sufficient
7 to satisfy the public interest test in rural areas. In
8 fact, Time Warner's VoIP service may result in a form of
9 rural cream-skimming in areas served by the rural LECs.
10 Cream-skimming refers to the practice of targeting only
11 customers that are the least expensive to serve, thereby
12 undercutting the ILECs ability to provide service
13 throughout the area.

14 For the rural LECs, 2003 regulated access and
15 Universal Service revenues represented approximately 50%
16 of total regulated revenues, or approximately \$41 per
17 month per line. The \$41 amount includes contributions
18 that allow the rural LECs to charge the statewide
19 weighted average rate of less than \$15 per month for
20 basic local exchange residential service to all their
21 subscribers. Allowing Time Warner to provide its service
22 to customers residing in the more densely populated areas
23 of the rural LECs' service areas will eventually cause
24 erosion to the level of contribution that currently
25 allows all rural South Carolinians access to affordable

1 basic local exchange service. This will leave little
2 choice to the rural LECs that must provide service to all
3 subscribers residing in their areas but to raise rates
4 for basic local exchange service and/or seek additional
5 state and/or federal Universal Service funding.

6 Contrary to its claim, Time Warner offers no evidence
7 that its VoIP service will bring about lower rates,
8 improve quality of service and enhance services to
9 customers residing in the rural areas served by the rural
10 LECs. For all the reasons stated herein, the rural LECs
11 and SCTC respectfully request that the Commission deny
12 Time Warner's application to expand its certificated
13 authority to include the service areas of the rural LECs.

14 Thank you.

15 Q Thank you, Mr. Staurulakis. Please respond to any
16 questions the Commission or counsel may have.

17 CHAIRMAN MITCHELL: Mr. Mustian.

18 MR. MUSTIAN: Thank you, Mr. Chairman.

19 CROSS EXAMINATION BY MR. MUSTIAN:

20 Q Good afternoon, Mr. Staurulakis. How are you doing today?

21 A Fine, thank you.

22 Q I Just had a couple of questions for you and really it's
23 more to help me under-stand how this works. I want to
24 talk about specifically about the Vonage Order. Do you
25 still have a copy of that up there?

1 A Yes, I do.

2 Q I want to specifically talk about — I believe in your
3 testimony, on pages 3 and 4, you discuss paragraphs 5
4 through 9 of the Vonage Order, is that correct?

5 A That's correct.

6 Q I believe you state that because of certain features that
7 Vonage has, such as portability and different issues such
8 as that, that those are the specifics that make it
9 different from what Time Warner is offering and therefore,
10 that is your belief that those differences is why the
11 Vonage Order does not preempt this Commission from
12 regulating Time Warner. Is that correct?

13 A That's correct.

14 Q I want to kind of ask you, in your testimony, to look at
15 paragraphs 5 through 9, and I kind of just wanted to get
16 your opinion on paragraph 32 of the Vonage Order and how
17 it sets out the requirements for, I believe what they
18 call the basic characteristics similar to DigitalVoice,
19 and I wanted to get your opinion on what the differences
20 are and how paragraph 32 applies to Time Warner.

21 A I think, obviously, I read the Order in its entire
22 context, but keep in mind that the Vonage Order was
23 another in a series of orders that the Commission made
24 decisions on with respect to specific types of services
25 utilizing an IP platform or IP technology. There was a

1 [INAUDIBLE] Order prior to the Vonage Order which dealt
2 with free-world dialup, which was a service somewhat
3 similar to Vonage but again meaning a caller using that
4 service called another caller using that service, the
5 calls never touched the public switched network. In that
6 proceeding, the FCC found that that was an information
7 type service that wasn't subject to many of the
8 telecommunications matters that a telecommunications
9 carrier would be subject to. But, that was a specific
10 type service.

11 Then there was the AT&T decision where AT&T was
12 claiming that if a call originated and terminated on the
13 public switched network but used an IP protocol in
14 between for transmission, AT&T somehow felt that they
15 didn't have to pay access charges. Well, the FCC denied
16 that petition, and AT&T in turn had to deal with the
17 access charge issue.

18 Then came the Vonage Order, but again, the pattern
19 had been set that the FCC, they have another open
20 proceeding, an IP-enabled services proceeding where they
21 indicate that they'll deal with all the myriad of issues,
22 and they make reference to it in this order. But, up to
23 this point in time, and obviously to the frustration of
24 some of the FCC Commissioners, the FCC has chosen to
25 slice and dice these services and take them one at a time

1 and look at specific characteristics in determining what
2 parts of telecommunications rules that these services are
3 applicable to and which ones they're not.

4 When I read this order, everything to me goes back
5 to what make the Vonage service unique, which is the
6 inability, and this was discussed earlier here in the
7 room, of the Commission or anybody, Vonage itself —
8 Vonage indicates it has no clue where their callers are
9 but the portability of that service and the fact that you
10 cannot jurisdictionalize, meaning you can't figure out
11 what part of it is a state call because these are packets
12 and what part is an interstate call; therefore, it would
13 be very difficult for a state commission to figure out
14 what it would have jurisdiction over. My reading of the
15 Order and the discussion and the decision really goes
16 back to those four characteristics, or capabilities I
17 should say, that are in those first few pages of the
18 Order.

19 When I look at paragraph 32, it seems to me
20 paragraph 32 really gets back to the rest of the Order.
21 They start on paragraph 32 by saying,

22 Indeed, the practical inseverability of other
23 types of IP-enabled services having basic
24 characteristics similar to DigitalVoice.

25
26 Everything ties back it seems to me to those fundamental
27 issues or capabilities that make DigitalVoice a unique

1 service.

2 When they talk about, and I know the issue was
3 addressed earlier, about this third characteristic about
4 sequentially or simultaneously giving the customer the
5 ability to manage its service — if one goes back and
6 looks at paragraph 7 on page 4, it talks about using the
7 Vonage service — what that customer can do. That customer
8 can do a lot on a real-time basis, sitting down at their
9 computer and reconfiguring their service. So, again, I
10 read 32 in the context of the rest of the Order which is
11 really a jurisdictional order and nothing more.

12 Q I guess just real briefly just kind of clarify — in your
13 testimony you have four things. You have portability, use
14 of specialized customer premise equipment, ability of
15 customers to manage their communications dynamically, and
16 numbers assigned from the North American Numbering Plan
17 are not necessarily tied to the physical location. I
18 guess portability I think obviously is where you think
19 that Time Warner diverges from what Vonage is offering.
20 Is that correct?

21 A That's correct.

22 Q And, I guess kind of tied into that would be number 4
23 related to the North American Numbering Plan. So, those
24 are kind of — there are two separate ones that are sort
25 of tied in together. Do you disagree that they offer

1 consumer premises equipment, specialized CPE?

2 A I think again to make their service work, Vonage
3 indicates that they have, the customer has a couple of
4 options depending on how they want to make the service
5 work. But, what they made clear is, you cannot attach
6 your analog phone to their MTA or ATA device, depending
7 on what you want to call it, and it won't work. So, you
8 need some type of specialized equipment either in that
9 box or in a specialized phone to make the service work.

10 Q Do you think that Time Warner Services allows it
11 customers to manage its communications dynamically?

12 A Based on what I heard earlier, I don't get the impression
13 that a Time Warner customer can go to a website and, in
14 essence, reconfigure the services that they either
15 already have ordered or want to order. My understanding
16 of Vonage, and I've been on a panel with Jeffrey, I
17 forgot his last name, excuse me, the CEO of Vonage. They
18 designed their product specifically to bring those
19 capabilities down to the customer level that that
20 customer would have the ability to reconfigure that
21 service in almost any way they wanted to based on what
22 they had ordered, and if they wanted to order additional
23 services, it could be very easily done, it'd be real-
24 time. I don't, again based on what I've heard today, that
25 the Time Warner service has that capability.

1 Q I guess I've had trouble with the term dynamically and
2 how that applies to this, and I could look at it two
3 ways. One is the definition of dynamic; that is,
4 interaction. Is that what you're saying that is required
5 to meet that definition, that there be interaction with
6 the customer?

7 A If you go back to paragraph 7 on page 4, I, again, just
8 look at it based on what's in the record at the FCC.
9 Vonage's real-time online account management feature
10 allows customers to access their accounts 24 hours a day,
11 which some of the services do, through an Internet web
12 page to manage their communications by configuring service
13 features, handling voicemail and editing user
14 information. Going to the last sentence,

15 Using other features, users may request that
16 DigitalVoice ring simultaneously the user's
17 Vonage number plus any other number in the
18 United States or Canada regardless of who
19 provides the service connected with the other
20 number.

21
22 So, again, I take that to read that the customer, it has
23 a great deal of control over the service and that's how I
24 guess I read section 32 in terms of it relates back to
25 the uniqueness of the Vonage service in determining
26 whether the jurisdictional nature is a federal jurisdiction
27 or a state jurisdiction.

28 Q To go back to paragraph 32 — I hate to keep harping on

1 this, but if you go back to page 21 and if you'll look,
2 we had talked a little bit about footnote¹¹³ at the
3 bottom of that page. I wanted to ask you about the second
4 from last sentence, it's about four lines up from the
5 bottom of that page. I believe if you'll just tell me if
6 I read it correctly. It says,

7 The integral nature of these features and
8 functions renders cable VoIP service an
9 interstate offering subject to exclusive FCC
10 jurisdiction. Not every cable VoIP service has
11 the same mix of features and functionalities,
12 but all cable VoIP offers the types of
13 enhancements that render it an interstate
14 service. Similarly, while the network
15 architecture of each cable VoIP system will
16 not be identical, they share the same
17 centralized network design that impart an
18 interstate nature.

19
20 I believe that came from a letter that's dated
21 October 28 from the NCTA, ex parte letter. Just
22 wanted to get your opinion on how that applies into
23 cable VoIP services.

24 A I think, true to form, the FCC when they receive comments
25 from parties through either ex partes or through comments
26 I think they always try to bring some of those comments
27 into their final orders. But, an ex parte is just that,
28 an ex parte, one group giving an opinion. In this case,
29 it was the opinion, I guess of maybe NTCA. Again, I don't
30 read this Order as a blanket preemption. What the
31 Commission told the Minnesota Public Utilities Commission

1 is in this situation, you don't have jurisdiction with
2 respect to this service. And I read it as if anybody else
3 came in and sought the same relief that Vonage sought and
4 offered services similar to DigitalVoice, they would
5 receive the same preemption treatment. I don't read this
6 as being a blanket order to preempt a VoIP provider, any
7 VoIP provider, not just Time Warner, from state tariff
8 and certification requirements.

9 Q I'm going to switch gears a little bit. To you knowledge,
10 do any of the intervenors in this case provide DSL or
11 broadband services to their rural customers, are you
12 aware?

13 A Many rural LECs, and including some of the rural LECs
14 here, provide a DSL service.

15 Q In your opinion, would those customers be able to
16 subscribe to Vonage using that broadband service?

17 A They would.

18 Q Do the intervenors, to your knowledge, have objection to
19 the use of Vonage type services, VoIP type services and
20 the deregulation of those type services or do you object
21 to even those Vonage services as well?

22 A I can't render an opinion as to how they feel about it.
23 I'm not so sure if Vonage has even come into any of the
24 areas, but at the same time and I think as Ms. Patterson
25 indicated earlier, if they did, I'm not so sure the

1 companies would know it.

2 MR. MUSTIAN: I have no further
3 questions, Mr. Chairman.

4 CHAIRMAN MITCHELL: Thank you. Mr.
5 Ellerbe?

6 MR. ELLERBE: Thank you, Mr. Chairman.

7 CROSS EXAMINATION BY MR. ELLERBE:

8 Q Good afternoon, Mr. Staurulakis. You're not a lawyer, are
9 you sir?

10 A I am not.

11 Q Your firm though does advise and consult with rural
12 telephone companies, correct?

13 A That's correct.

14 Q In fact, your firm is representing some of these
15 companies in connection with negotiations that have now
16 led to an arbitration that has been filed with this
17 Commission.

18 A That's correct.

19 Q That's the arbitration that has been referred to earlier
20 this morning between MCI and some of these very same
21 rural companies.

22 A I'm aware of that.

23 Q MCI has a statewide certificate, doesn't it, Mr.
24 Staurulakis?

25 A If you say so. I have no reason to doubt that.

1 Q Would your company be negotiating with MCI if it didn't
2 have a statewide certificate issued by this Commission
3 that recognized that it was a telecom carrier throughout
4 the state of South Carolina?

5 A I have not been involved in any arbitration proceedings,
6 but to the extent that a company was not certificated,
7 I'm not so sure what we would be negotiating.

8 Q You would refuse to — you would advise your clients to
9 refuse to negotiate if the company wasn't certified,
10 correct?

11 A I would most likely, whether it was MCI or anybody else,
12 I would mostly advise the clients to take whatever steps
13 that were available to them to either enter into
14 negotiations or refuse to enter into negotiations based
15 on what the rules say and what they're obligated to do.

16 Q You made reference to it that by getting certification,
17 one of the things that you can get when you get
18 certification is that then you can negotiate with local
19 exchange companies towards interconnection agreements,
20 correct?

21 A That's correct.

22 Q That's one of the reasons and that's something I
23 explained this morning. I think you were here. That's why
24 Time Warner wants to be certified, correct?

25 A That's correct.

- 1 Q So, MCI, have we established that MCI has a statewide
2 certification?
- 3 A If you tell me they do. I assume they do. I have not been
4 involved with the arbitration proceeding. Somebody else
5 in my firm handles that. So, assuming that's correct, I
6 have no reason to doubt it.
- 7 Q Isn't it the case, Mr. Staurulakis, if you know, that MCI
8 entered into a stipulation with the Coalition companies
9 at the time it applied for CLEC authority in this state?
- 10 A I do not recall that, but again, I was not involved with
11 that.
- 12 Q Are you familiar with the stipulation?
- 13 A I'm not.
- 14 Q With respect to those negotiations, Mr. Staurulakis, just
15 tell me if you know how they operate particularly with
16 respect to the applicable provisions of the Telecom Act.
17 Under Section 251, there's certain obligations that all
18 telecom companies have, correct?
- 19 A Yes, that's correct.
- 20 Q Then there's another set of obligations, additional
21 obligations that local exchange companies have as well,
22 correct?
- 23 A That's correct.
- 24 Q Then there's a third set that applies primarily to Bell
25 Operating Companies, correct?

1 A That's correct.

2 Q When a rural company, such as the ones that are
3 represented by your company, receives a bona fide request
4 for interconnection, one of the things that rural company
5 can do is to apply to this Commission, give notice to
6 this Commission that it is invoking its rural exemption,
7 correct?

8 A Correct.

9 Q At that time, it's then the CLEC, that wants that inter-
10 connection agreement, must come before the Commission and
11 ask that the rural exemption be set aside, correct?

12 A Correct.

13 Q There is a well — I won't say well thought out — there
14 is a complex statutory scheme spelled out in Section 251
15 that describes how that process works, correct?

16 A Correct.

17 Q Do you know whether any of the companies that are involved
18 in the MCI arbitration have invoked their rural exemption?

19 A I do not know.

20 Q Are you also aware that that there is another provision
21 of Section 251 that allows a rural company to come to
22 this Commission and take the burden of making a sufficient
23 showing so that it not only avoids unbundling requirements,
24 it can also avoid other requirements that it deems to be
25 technically and feasibly are too burdensome, correct?

1 A That's correct. I understand, yes.

2 Q You agree with that sort of generalized?

3 A Yes.

4 Q Those are provisions in the federal statute that were put
5 there to give rural companies some protections with
6 respect to having to negotiate interconnection arrange-
7 ments that will allow CLECs to come into their territory
8 and provide services there, correct?

9 A Correct, and to ensure that, in essence, the public
10 interest arguments were being preserved.

11 Q But, you agree with me that a company invoking its
12 protection under the rural exemption is only protected
13 from —

14 MR. ELLERBE: Excuse me, Mr. Chairman.

15 CHAIRMAN MITCHELL: Certainly.

16 [Short Pause]

17 Q [Mr. Ellerbe] I'm looking at 251, Part C, which is
18 additional obligations of incumbent local exchange
19 carriers, which includes unbundled access to network
20 elements, correct?

21 A That's correct.

22 Q These are the provisions under Part C that the rural
23 exemption allow rural companies, unless it's set aside by
24 this Commission, it allows rural companies to avoid those
25 obligations under Part C, correct?

1 A That's correct.

2 Q But, the rural companies do have the obligations under
3 Part B of Section 251, correct?

4 A That's correct. Refresh my memory on 251(B), though.

5 Q I will. That's exactly what I'd like to do. I'll be glad
6 to share this. Resell, do you recall that?

7 A Yes.

8 Q Number portability?

9 A That's correct.

10 Q Dialing parity?

11 A That's correct.

12 Q Access to rights-of-way?

13 A That's correct.

14 Q Reciprocal compensation?

15 A That's correct.

16 Q So, in order for the companies that are clients of your
17 company to avoid those obligations under the federal
18 statutory scheme, those companies would have to come to
19 this Commission and make the showing under Part F(C)(2).
20 Are you familiar with that?

21 A Technically and feasible, yes, there's two or three tests
22 there.

23 Q Again, those companies can come to this Commission and
24 ask this Commission to make findings so that they
25 wouldn't have to comply with number portability, resell,

1 dialing parity and those things, right? Isn't that the
2 way it works?

3 A That's the authority that's been given to companies per
4 the Act. That's correct.

5 Q The decision maker, with respect to those issues, is this
6 Commission both with respect to setting aside the rural
7 exemption and with respect to the company's ability to
8 come in and say, relieve us from obligations under Part B.

9 A Based on a *bona fide* request, that's correct.

10 Q The first thing, I'm glad you mentioned that because
11 that's where I was heading. First thing that has to
12 happen is, there's got to be a *bona fide* request.

13 A Correct.

14 Q For interconnection. Then the issues that are involved in
15 those questions relate to what is it that the company's
16 asked for in this interconnection agreement. Is it
17 infeasible; is it too burdensome, correct?

18 A Correct.

19 Q But, we can't, Time Warner can't begin the process until
20 it is certified by this Commission in those areas,
21 correct?

22 A Correct.

23 Q Would you agree with me that certification in and of
24 itself does not take away the rural companies' rural
25 exemption, correct?

- 1 A Under the rules as I read them, no it does not.
- 2 Q It also doesn't take away from the companies' opportunity
- 3 to come to this Commission and say, give us more
- 4 protection than the rural exemption, give us protection
- 5 from number portability, dialing parity, rights-of-way,
- 6 under Part B.
- 7 A Based on what a certificated carrier is seeking, it
- 8 doesn't take that away.
- 9 Q Those procedures of the Act that are spelled out in
- 10 detail in the Act are still available even though the
- 11 Commission has granted a CLEC a certificate in the area,
- 12 correct?
- 13 A That's correct, and I don't think there's anything in my
- 14 testimony that says that's not correct.
- 15 Q I didn't think we disagreed about it, Mr. Staurulakis. In
- 16 page 13 of your testimony, sir, lines 7 through 9, you
- 17 make a point that Ms. Patterson appears to ignore the
- 18 fact that most if not all of the subscribers residing in
- 19 the areas served by the rural LECs already have access to
- 20 a competitive service, wireless, correct?
- 21 A [Examining] Correct.
- 22 Q And, of course, this Commission has heard a lot about in
- 23 Universal Service Fund proceedings, has heard a lot about
- 24 wireless companies providing competitive, competing away
- 25 certain subsidy flows, right? You're familiar with that

1 testimony.

2 A I'm very familiar, yes.

3 Q I think you presented some of that testimony. And, that's
4 taking place in the areas served by all of these rural
5 companies, correct?

6 A Correct.

7 Q Which of those rural companies have been forced to come
8 to this Commission to ask for a rate increase as a result
9 of that wireless competition?

10 A At this point in time, none that I'm aware of, if you're
11 referring to a local rate increase.

12 Q That's what I'm referring to. So, we've had competition
13 for some years from the wireless companies in these
14 areas. You say that there is competition in all these
15 areas, but that competition hasn't caused any of these
16 companies to come in to this Commission and ask this
17 Commission to increase local rates.

18 A That's correct. But, in the context of the way I address
19 that in my testimony was in response to Ms. Patterson's
20 claim that the companies would have virtually no
21 competition in their areas at this point in time.

22 Q In your testimony, if the Commission adopts your
23 testimony, customers in the areas that are under
24 consideration won't have the choice of another wireline
25 carrier.

1 A What I'm saying at this point in time is that not all
2 customers will have that choice, only the customers that
3 Time Warner chooses to provide facilities to. Those
4 companies have obligations to all the customers.

5 Q Mr. Staurulakis, do you think that this Commission has
6 the legal authority to require a CLEC, any CLEC, to
7 completely build out an entire service area as defined by
8 the incumbent before it can be certified to provide
9 service?

10 A I'm not an attorney, remember.

11 Q Are you going to answer the question?

12 A The Commission can take whatever actions it deems
13 appropriate; however, the Commission also is in a
14 position to protect those subscribers and those customers
15 that may never have access to a competitor.

16 Q Do you have an opinion about whether this Commission has
17 the authority to require any CLEC that wants to begin
18 offering service in these areas to build out throughout
19 the whole area before it can start serving the first
20 customer?

21 A The five rural LECs have carrier of the last resort
22 obligations. I'm not aware that anybody else would have a
23 carrier of last resort obligation which would entail them
24 having to serve all customers in a service area
25 requesting that service.

1 Q I'll ask one more time. Do you think this Commission can
2 require any CLEC that wants to come in and offer
3 facilities-based competition in an area to meet those
4 obligations of being — you can only serve there if
5 you're going to be a carrier of last resort and serve
6 every person there?

7 A Can they? The Commission can do, I believe, whatever it
8 likes to do. It can do that if it so chose to do that.

9 Q Do you think that'd be consistent with the federal
10 Telecom Act, Mr. Staurulakis?

11 A I think the FCC has taken a position that it is not
12 necessarily required for a competing carrier to have to
13 build out an entire service area, but that doesn't take
14 away the authority the Commission might have to do what
15 it believes needs to be done.

16 Q Were you here when Mr. Bowen read the South Carolina
17 statute to Ms. Patterson which included the phrase,
18 consistent with the 1996 Federal Telecom Act?

19 A There were provisions read from several aspects of South
20 Carolina law, and I just don't recall that one.

21 Q Most of these rural companies have diversified, haven't
22 they, Mr. Staurulakis?

23 A Diversified in what way?

24 Q In terms of now offering broadband services to much of
25 their service areas.

- 1 A The broadband service — if diversification is providing
2 additional services, they provide those services.
- 3 Q The Internet services are unregulated by this Commission,
4 correct?
- 5 A Their services are regulated. The DSL that these companies
6 provide are regulated by the FCC. These companies provide
7 their DSL service out of NECA, a regulated NECA tariff.
8 From the regulated ILEC perspective, they provision that
9 service.
- 10 Q Are those services regulated by this Commission?
- 11 A The DSL service is not regulated by this Commission, no.
- 12 Q Isn't it true that many of these companies have also moved
13 into the cable television or video through DSL, VDSL
14 service?
- 15 A I couldn't tell you for a fact at this point who's done
16 that and who has not, but there are rural companies out
17 there that are doing that.
- 18 Q Some have done that?
- 19 A That's correct.
- 20 Q Are you aware that several of the rural companies in
21 South Carolina have given up their rural exemption?
- 22 A I believe there are at least one of two that I'm aware of.
- 23 Q HTC, Hargray, Bluffton, does that ring a bell?
- 24 A That does, Hargray and HTC. I couldn't recall Bluffton.
- 25 Q Do you know whether their giving up their rural exemption

1 has caused them to come to this Commission asking for any
2 rate increase, Mr. Staurulakis?

3 A I do not — they have not, and I don't want to say
4 collectively that they have not all come in for any type
5 of rate increase. I believe there has been some
6 additional State Universal funding requests.

7 MR. ELLERBE: I have no further
8 questions. Thank you, Mr. Chairman.

9 CHAIRMAN MITCHELL: Thank you, sir.
10 Commissioners? Commissioner Clyburn.

11 EXAMINATION BY COMMISSIONER CLYBURN:

12 Q Good afternoon. I'm shifting gears a bit since looking at
13 the application on its face which states that they are,
14 the applicant is applying for, and I quote,

15 [t]o serve customers in certain areas where
16 incumbent telephone companies currently have
17 rural exemption.
18

19 That's what I read. One of the things that I took note
20 of, by my notes from your testimony that I wanted to — if
21 that's all they're doing, why should it really matter,
22 why are you here in opposition to this application if
23 we're truly this evolving market — you know we talk about
24 options in areas, including rural areas; why should we be
25 concerned about, not to put words in your mouth, but the
26 protection of the small companies?

27 A Again, I think as you indicate the entire industry

1 continues to be very dynamic. Things are changing daily.
2 But, these companies all have taken on obligations,
3 carrier of last resort obligations, to provide affordable
4 basic local exchange service to all customers requesting
5 it in their service areas. They spent millions of dollars
6 building out the necessary facilities. They charge rates
7 that are regulated by this Commission. They are heavily
8 dependent on access charge revenues, which are under
9 another set of notices at this point in time, NPRMs, with
10 intercarrier compensation. Comments are due in 60 days on
11 a major intercarrier compensation reform docket. The
12 Federal Universal Service Fund is also being looked at by
13 the Federal State Joint Board.

14 So, there are a number of things in play. The companies
15 are not opposed to the extent they need to compete and
16 compete on a level playing field, but they have these
17 obligations. And, the fact of the matter is in Time
18 Warner's case, Time Warner does not have facilities
19 throughout the entire service areas of these five
20 companies. Yet, the actions of Time Warner or any other
21 competitor coming in just looking to provide service to a
22 select group of clients certainly has benefits to certain
23 customers in those areas. But, at the same time, it can
24 have significant implications as addressed in my testimony
25 to the remaining customers who may never have access to

1 those types of services.

2 Q Would you agree or disagree if we were to start in terms
3 of deploying or building a network right now today that
4 it probably would not look like the existing network,
5 meaning if we were to, if we just erased everything and
6 started over again, would we do things the same way in
7 terms of —

8 A I don't know. I mean, again — Technology's evolved over
9 time, I mean, we would use obviously whatever the latest
10 technology would allow us to use to serve those customers.
11 But, at the same time, these customers serve some large
12 geographic areas and so obviously the technology that
13 they've utilized has been the latest technologies that
14 have evolved over that period of time. Going back to your
15 point, if you use the technology that is prevalent today
16 to start building that network with that same technology,
17 it'd be the technology we'd use three years from now,
18 maybe not.

19 Q I guess what prompted me to kind of think about it is an
20 older case, but something Mr. Ellerbe talked about in
21 terms of basically using the current footprint. And,
22 again, I'm taking a lot of liberties today in terms of my
23 interpretation of the current footprint and almost
24 defining what somebody else's market should be. Tell me
25 why I should not listen to that argument that every

1 company that has a business plan should be able to define
2 who they market to and how they deploy that in order to
3 serve whomever the customer.

4 A But, I think, at the end of the day if everybody has that
5 right and everybody has that choice, maybe perhaps it's
6 not that big of an issue, but, I'm not sure everybody has
7 that right or that choice. Let's face it, when companies
8 make decisions to go into certain businesses or certain
9 areas, they're looking obviously at the ability to do it
10 in the most profitable way. But having a carrier of last
11 resort obligation and continue to provide affordable
12 basic local exchange service in conjunction with
13 Universal Service standards that have been established by
14 not only the FCC but state commissions like the South
15 Carolina Commission, they don't have, those companies
16 have not had that luxury of choice. Now, if we were to
17 say let's deregulate everybody, let's deregulate the
18 rural ILECs, let's deregulate the RBOCs, let's deregulate
19 everybody else, it's a free-for-all, would these
20 companies be serving the customers they're serving today?
21 They'd probably make competitive choices too. Now, where
22 would that leave perhaps a lot of rural customers?
23 Probably with no choice at all for service.

24 Q If we were to back up and look at the word *densely*
25 *populated areas*, because I'm sure this is probably the

1 same argument that the incumbent LECs, even in the more
2 densely populated/urban areas, use when the market was
3 opened up. When is the right time for us to move to the
4 next level? We truly embrace the spirit of the Telecom
5 Act.

6 A Again, nobody's opposed to anybody being able to
7 provision services or technologies that benefit customers
8 so long as the customers that are not benefited are not
9 harmed. I think when the playing field becomes a little
10 bit more equalized and maybe it becomes equalized when
11 the FCC finally addresses Universal Service and how
12 support gets calculated, and when support gets paid, and
13 who it gets paid to, and when the intercarrier
14 compensation, whether we go to a bill and keep environment,
15 whether there is anything called access two years from
16 now, three years from now. When the FCC addresses the IP-
17 enabled services, what obligations do companies like
18 Vonage, like Time Warner Cable have to pay into funds,
19 have to withdraw from funds. When everybody's on that
20 equal playing field, then perhaps that is the time to
21 perhaps look and open up these markets because then,
22 again, the prospect of Universal Service, customers that
23 may never have those choices will not be financially
24 harmed and won't have to give up their telephone service
25 or be forced to go to an inferior service in order to

1 stay on a network.

2 Q Thank you.

3 CHAIRMAN MITCHELL: Any other
4 questions?

5 [No Response]

6 CHAIRMAN MITCHELL: If not, Mr. Bowen?

7 MR. BOWEN: No questions. Thank you
8 very much.

9 CHAIRMAN MITCHELL: Sir, you may step
10 down.

11 MR. BOWEN: We call Mr. Oliver,
12 please.

13 WHEREUPON, H. Keith Oliver, first
14 being duly sworn, assumes the stand and
15 testifies as follows:

16 DIRECT EXAMINATION BY MR. BOWEN:

17 Q Mr. Oliver, would you please state your name, your
18 address, where you are employed and in what capacity?

19 A Yes. My name is Keith Oliver. My business address is
20 579 Stoney Landing Road in Moncks Corner, South Carolina.
21 I'm employed at Home Telephone Company as the Vice
22 President of Finance.

23 Q Mr. Oliver, did you have cause to prepare some testimony
24 in question and answer form, some 17 pages long, that was
25 prefiled with this Commission?

1 A Yes, sir, I did.

2 Q Do you have any amendments, changes, modifications to
3 that today?

4 A No, sir.

5 Q If I were to ask you those same questions on the stand
6 today, would your responses be the same?

7 A Yes, sir, they would.

8 MR. BOWEN: Mr. Chairman, we'd like to
9 have that prefiled testimony placed in the
10 record as if orally testified to from the
11 stand.

12 CHAIRMAN MITCHELL: We'll do that, Mr.
13 Bowen. It'll be read into the record as if
14 given orally.

15
16 [PREFILED DIRECT TESTIMONY OF
17 H. KEITH OLIVER FOLLOWS]:

**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
TESTIMONY OF
H. KEITH OLIVER
DOCKET NO. 2004-280-C**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A. My name is H. Keith Oliver. My business address is 579 Stoney Landing Road,**
3 **Moncks Corner, South Carolina 29461.**

4

5 **Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

6 **A. I am employed by Home Telephone Company, Inc. as the Company's Vice**
7 **President of Finance.**

8

9 **Q. PLEASE BRIEFLY OUTLINE YOUR EDUCATION, TRAINING, AND**
10 **EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY?**

11 **A. I received a Bachelor of Science degree in Business Administration from the**
12 **College of Charleston in May 1977. After being licensed as a Certified Public**
13 **Accountant in May of 1979, I continued work in public accounting until October**
14 **of 1984 when I was hired in the finance area at Home Telephone Company. In**
15 **December of 1999, I was named Vice President of Finance. In this position, I**
16 **am responsible for all financial matters, including Carrier Access Billing**
17 **Systems (CABS) for interLATA traffic, National Exchange Carrier Association**

1 (NECA) settlements for interstate traffic, and the settlement process for
2 intraLATA toll. I have served on several South Carolina Telephone Association
3 (SCTA) committees, including previously serving as Chairman of the SCTA
4 Accounting Committee and Interconnect Committee.

5 I am also associated with several national organizations. I serve as a board
6 member for the Organization for the Promotion and Advancement of Small
7 Telecommunications Companies (OPASTCO). OPASTCO is an international
8 trade organization representing over 500 small incumbent local exchange
9 carriers serving primarily rural areas throughout the United States and portions
10 of Canada. I serve on OPASTCO's Separations and Access Committee as well
11 as their Universal Service Committee, the Committee which developed the
12 recently published white paper entitled Universal Service in Rural America: A
13 Congressional Mandate at Risk. In addition I currently serve as chairman of the
14 United States Telecom Association (USTA), Small Company Caucus which
15 represents over 500 small member companies of USTA. I also serve on
16 USTA's telcom policy committee which is responsible for establishing the
17 overall telecommunications policy positions for USTA and previously served on
18 USTA regulatory tactics committee which is responsible for representing
19 USTA's positions before the Federal Communication Commission (FCC). I
20 have appeared before this Commission many times in the past to present
21 testimony on behalf of the SCTA and the South Carolina Telephone Coalition
22 (SCTC), including many recent appearances before this Commission testifying
23 on various Universal Service Funding and other issues.

1 Q. ON WHOSE BEHALF ARE YOU TESTIFYING TODAY BEFORE THIS
2 COMMISSION?

3 A. I am presenting testimony today on the behalf of Home Telephone Company,
4 Inc., Farmers Telephone Cooperative, Inc., Fort Mill Telephone Company, d/b/a
5 Comporium Communications, Inc., PBT Telecom, Inc., St. Stephen Telephone
6 Company (the "Rural LECs") and the South Carolina Telephone Coalition
7 ("SCTC"), an informal organization of incumbent local exchange carriers
8 ("ILECs") certified in the State of South Carolina.
9

10 Q. WHAT ARE THE RURAL LECS AND THE SCTC ASKING THE
11 COMMISSION TO DO IN THIS MATTER?

12 A. Time Warner Cable Information Services (South Carolina), LLC ("TWCIS") has
13 asked the Commission to expand its certificated authority to provide service in
14 five additional areas served by the Rural LECs. On the behalf of the Rural
15 LECs and the SCTC, I am respectfully requesting that the Commission deny
16 TWCIS' request because it is not in the public interest and because of its
17 adverse impact on the availability of affordable local exchange service as I
18 explain in more detailed below.
19

20 Q. WHAT IS VOIP?

21 A. VoIP stands for "Voice Over Internet Protocol." From a customer's standpoint,
22 the kind of VoIP service TWCIS proposes to provide is really no different from
23 traditional telephone service. The customer picks up a telephone and places a

1 local or long distance call and talks to someone on the other end. What
2 distinguishes "VoIP" service from existing telephone service is how that voice
3 message is transmitted. With VoIP service, internet protocol is used
4 somewhere along the path of that call.

5
6 **Q. DOES THE TERM "VOIP" REFER TO A SINGLE SERVICE?**

7 **A.** No. The term "VoIP" can be used to describe any of several completely
8 different services using Internet Protocol (IP) signaling. One type of VoIP call is
9 a computer-to-computer public Internet-routed call where a broadband
10 connection is used on both ends and the call does not touch the Public
11 Switched Telephone Network (PSTN). A second type of VoIP call is where
12 carriers are simply using IP as the transmission medium within their networks
13 as an internal technology choice, with the call originating and terminating on the
14 PSTN. A third type is when a VoIP call originates on the public Internet over a
15 broadband connection and terminates over the PSTN or vice versa. Finally, a
16 VoIP call can originate on a private IP network and terminate on the PSTN or
17 vice versa. In this last example, which appears to be the one that describes
18 TWCIS' service, the use of IP signaling is again an internal technology choice.
19 The last three types of calls utilize a portion or portions of the PSTN for their
20 completion. When they reach the ILEC network, they have been converted to
21 voice communication at some point in the network and the ILEC switch cannot
22 distinguish the VoIP call from any other terminating call. As such, all applicable
23 charges should apply on the originating or terminating end of the call.

1 Q. DID THE FCC PREEMPT STATE REGULATION OF VOIP SERVICES IN ITS
2 "VONAGE ORDER"?

3 Not necessarily all VoIP services. The FCC preempted the Minnesota Public
4 Utilities Commission in its "Vonage Order"¹, and extended its preemption to
5 "other services having the same characteristics as DigitalVoice [Vonage's VoIP
6 service.]" The FCC went on to state that it would preempt state regulation of
7 VoIP services provided by "other entities, such as cable companies . . . to an
8 extent comparable" to what it did in the Vonage Order (my emphasis added).
9 However, the FCC was very explicit in delineating those characteristics that it
10 found justified preemption. TWCIS has not demonstrated that its VoIP product
11 has the same characteristics as Vonage's DigitalVoice service to justify state
12 preemption. The FCC preempted the state commissions with respect to
13 Vonage-like services, based on a finding that "provision of tightly integrated
14 communications capabilities greatly complicates the isolation of intrastate
15 communications and counsels against patchwork regulation." However, it
16 appears that TWCIS service is location specific and can be used only in the
17 location where the service is ordered. Therefore, there is no jurisdictional issue
18 related to this service. While we do not believe the Commission is preempted
19 from regulating TWCIS, if the Commission finds that it is preempted by the
20 FCC's Vonage Order, the Commission should dismiss TWCIS' petition.

¹ See FCC Memorandum Opinion and Order in WC Docket. No. 03-211, released November 12, 2004 in the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission.

1 Q. WHAT IS THE SIGNIFICANCE OF THE FACT THAT MOST VOIP CALLS
2 UTILIZE THE PSTN?

3 A. TWCIS makes much of the fact that it has upgraded 98% of its cable plant to be
4 two-way capable in order to provide facilities-based competition. What TWCIS
5 glosses over, however, is the fact that most VoIP calls rely on the PSTN to
6 make the service work, and the PSTN has been built and maintained by
7 telecommunications companies. While TWCIS has built cable facilities in areas
8 that it deems profitable from a business standpoint, the PSTN has been built
9 with the goal of providing ubiquitous telephone service throughout the United
10 States to provide universal service. TWCIS needs the PSTN to make its VoIP
11 service work. It is essential to recognize that without the PSTN, TWCIS' VoIP
12 customers can only call other VoIP customers and not customers on the PSTN.
13

14 Q. BASED ON ITS TESTIMONY, DOES IT APPEAR TWCIS IS WILLING TO
15 COMPENSATE OTHER CARRIERS FOR TWCIS' USE OF THE PSTN?

16 A. Not really. TWCIS claims that it currently terminates calls to the PSTN through
17 relationships with competitive local exchange companies ("CLECs") and only
18 makes the general statement that calls destined for the PSTN are terminated in
19 accordance with the inter-carrier compensation regime. TWCIS should be
20 required to pay access or appropriate compensation for its use of other carriers'
21 facilities and ensure that important public policy goals like universal service are
22 not threatened by the provision of TWCIS' service. If VoIP providers are
23 permitted to use the PSTN and not pay for its use, who will pay to maintain and

1 upgrade the network? The burden for doing so will increasingly fall on the
2 customers "left behind," – i.e. those more rural and insular customers who are
3 costly to serve and don't have competitive options. While TWCIS states that it
4 will voluntarily pay access until such time as issues relating to IP-enabled
5 services are resolved at the federal level, we feel that this issue is an integral
6 part of the public interest determination during the certification process.
7 TWCIS' request should be denied, given the uncertainty in this area and the
8 potentially devastating impact it could have on customers in rural areas if a
9 carrier is permitted to provide service and later stops compensating other
10 carriers for use of the PSTN.

11

12 **Q. WHAT ARE SOME OF THE FACTORS THE COMMISSION SHOULD**
13 **CONSIDER IN EVALUATING TWCIS' PETITION?**

14 **A.** State law provides that, in determining whether or not to grant a certificate to a
15 carrier seeking to furnish local telephone service in the service territory of an
16 incumbent LEC, the Commission should take a number of factors into
17 consideration. See S.C. Code Ann. § 58-9-280(B). In addition to making
18 findings regarding the sufficiency of the applicant's technical, financial and
19 managerial resources, the Commission may require the applicant to meet the
20 Commission's service standards for the service to be provided and to
21 participate in the support of universally available telephone service at affordable
22 rates. In addition, the Commission may require a showing that the service to
23 be provided will not adversely impact the availability of affordable local

1 exchange service and that provision of the service will not otherwise adversely
2 impact the public interest.

3

4 **Q. HAS TWCIS DEMONSTRATED THAT PROVISION OF THE SERVICE WILL**
5 **NOT ADVERSELY IMPACT THE AVAILABILITY OF AFFORDABLE LOCAL**
6 **EXCHANGE SERVICE?**

7 **A.** No, it has not. As demonstrated in my testimony, the selective provision of
8 service by TWCIS will likely have an adverse impact on the availability of
9 affordable local exchange service particularly in areas served by rural
10 telephone companies. In fact, Ms. Patterson's testimony clearly states that
11 TWCIS intends to withdraw its retailed tariff offering once a new non-regulated
12 entity is created to provide the retail voice services currently being offered. As
13 a result, TWCIS would not contribute to state & federal universal service funds
14 as non-regulated revenues are most likely not assessed such contributions.

15

16 **Q. ARE THERE ADDITIONAL FACTORS THAT SHOULD BE CONSIDERED BY**
17 **THE COMMISSION IN EVALUATING THIS APPLICATION?**

18 **A.** Yes. The Commission should respectfully take notice that TWCIS is not a start-
19 up company that is trying to enter the rural marketplace, but a highly
20 specialized company that has the potential to drastically impact the provision of
21 telecommunications services in South Carolina within a very short time frame.
22 TWCIS, according to its own information, provides service to more than 68,000
23 high-speed data customers in South Carolina. However, these numbers pale

1 when compared to the fact that its cable service and, therefore, potentially its
2 VoIP service, passes more than 588,000 homes within South Carolina, which is
3 more than one-third of the 1,534,000 total households in the State. In addition,
4 TWCIS is the nation's second largest cable company with nearly 11 million
5 customers and it passes more than 18 million homes with 3 million broadband
6 customers in 27 states.

7

8 **Q. COULD TWCIS' PROVISION OF TELEPHONE SERVICE HAVE AN**
9 **ADVERSE IMPACT ON RURAL AREAS?**

10 **A.** Yes. Rural portions of our state tend to have a relatively low population
11 density. However, within most rural service areas, there are usually small
12 towns or communities that form small pockets of higher density. As an
13 example, my company, Home Telephone, serves approximately 903 square
14 miles with an average population density of a little less than 26 customers per
15 square mile. However, when you examine our service area in detail, you find
16 that almost 60% of our subscribers reside in less than 5% of our service area.
17 This drops the population density to less than 12 subscribers per square mile
18 for the balance of our service area. In contrast, the portion of our service area
19 that TWCIS currently serves has an average population density of 120
20 subscribers per square mile.

1 Q. WHY IS POPULATION DENSITY IMPORTANT?

2 A. Population density is a good indicator of cost. One of the main cost drivers for
3 rural LECs is loop length. The loop is the facility between the serving central
4 office and the end user's house. In sparsely populated areas, there are fewer
5 customers per mile and many miles between the central office and the
6 customer. This creates rural loop costs many times higher than that found in
7 urban areas. In fact, the FCC itself has recognized that rural loop cost can be
8 up to 100 higher than in urban areas.²

9

10 Q. HOW DOES THIS RELATE TO THE TWCIS APPLICATION?

11 A. As stated earlier, TWCIS generally only has facilities in the more populated
12 areas of rural companies. The areas they would serve tend to be in the least
13 costly to serve and therefore most profitable portions of a rural carrier's
14 services territory. The impact of the TWCIS' application could be the loss of a
15 rural company's lower cost customers, leaving the rural LEC with only higher
16 cost customers to serve.

² Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifteenth Report and Order, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, Report and Order, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19636, para. 45 (2001).

1 Q. WHY WOULD THIS HAVE A NEGATIVE IMPACT ON THE CUSTOMERS
2 REMAINING IN THE RURAL LEC'S SERVICE AREA?

3 A. Rural companies, like our urban counterparts, normally charge an average rate
4 per subscriber. In effect, subscribers in high-density areas help offset the cost
5 of serving subscribers in low-density areas. The loss of the lower cost, high-
6 density customers would have the results of leaving a higher cost to spread
7 over a smaller customer base. In effect, the average cost of service goes up
8 across the entire service area.

9

10 Q. HAVE YOU CALCULATED THE POSSIBLE IMPACT TO YOUR COMPANY
11 IF TWCIS WERE TO BE CERTIFIED TO SERVE IN YOUR SERVICE AREA?

12 A. Yes. Currently we estimate TWCIS' facilities pass approximately 1,700 of our
13 subscribers. If we were to lose these subscribers to TWCIS' VoIP service, it
14 would result in the loss of approximately \$1.6 million in annual revenue. It is
15 important to note that the loss in revenue would not result in any real decrease
16 in cost. In fact, as carriers of last resort who have an obligation to serve all
17 requesting customers, we would be left with telephone plant that we would be
18 required to leave in place in the event the current customer or a new customer
19 in that location decided that they wanted to obtain service again from the LEC.
20 In the meantime, there is no revenue being generated from the facilities while
21 they stand dormant. Thus, the overall net impact could be an average
22 decrease in revenues amounting to almost seven dollars per subscriber per
23 month, which would have to be recovered from our remaining subscribers. This

1 assumes no subscriber increase or expansion in TWCIS' service area. Should
2 TWCIS expand to other portions of our service area that have higher densities
3 and lower cost, the cost per remaining subscriber could spiral upward very
4 quickly. The example given is just for one rural telephone company in South
5 Carolina. Other rural telephone companies could potentially be even more
6 severely impacted.

7
8 **Q. ARE THERE CONCERNS ASSOCIATED WITH THE TYPE OF LIMITED**
9 **DEPLOYMENT OF A FACILITIES-BASED NETWORK THAT TWCIS**
10 **PROPOSES?**

11 **A.** Yes. There may be service areas where economies of scale make it difficult for
12 even one service provider to operate. Cream skimming in such areas could
13 leave some customers with no service at all. The current cable TV service
14 model does just this. Cable TV companies build out their systems to reach
15 those customers that are profitable to serve. Is there a risk that the current
16 model of ubiquitous telephone service could be replaced by the cable TV
17 model? This Commission has both a right and a duty to ensure that all
18 subscribers have access to affordable basic telephone service. The only way
19 this can be done is to insure a viable carrier of last resort in all areas of the
20 state. TWCIS is not proposing to deploy a ubiquitous network in South
21 Carolina, and in the rural areas only the incumbent rural telephone companies
22 have been willing to take on that obligation. We, as rural companies, have to
23 face the same difficult policy questions that this Commission faces. Do we

1 disadvantage the vast majority of rural customers to bring small benefits to the
2 few? In our case, the approval of this petition could result in small savings to
3 less than 7% of subscriber base. However, the net result could be in the form
4 of increased rates to the remaining 93%.

5

6 **Q. DOES A VOIP SERVICE PROVIDE A MEANINGFUL ALTERNATIVE TO ALL**
7 **CUSTOMERS IN THE AFFECTED RURAL AREAS?**

8 **A.** Definitely not. First of all, TWCIS VoIP service branded as Digital Phone will
9 only be available where Time Warner Cable provides High-Speed Internet or its
10 Cable Service. Additionally, given the current average tariffed monthly
11 residential rate of \$14.35 for basic telephone service compared to TWCIS rate
12 of \$39.95 to \$49.95 for its Digital Phone service, a simple financial analysis
13 indicates that only customers with an average toll bill of \$25 would be likely to
14 be attracted to TWCIS' VoIP service offering. Furthermore, before TWCIS will
15 offer VoIP service, the customer must also subscribe to Time Warner Cable
16 High-Speed Internet or Basic Cable.

17

18 **Q. DOES TWCIS CLAIM OTHER REGULATORY BENEFITS NOT AVAILABLE**
19 **TO SC RURAL LECS?**

20 **A.** Yes. TWCIS intends to provide service on an IP or internet protocol basis. IP
21 is ideally suited to data services. Recent technology advances have made it
22 possible to transport voice over this service. This is another case of technology
23 moving faster than regulations. There are many unanswered questions as to

1 how VoIP will be regulated, if at all. In fact, TWCIS in its application and in the
2 testimony of Ms. Patterson issues a "regulatory disclaimer" noting that "TWCIS
3 does not want anything in the application or docket to be construed as a
4 concession or agreement by TWCIS that the services at issue constitute
5 telecommunications services, local exchange services, common carrier
6 offerings, or services that are otherwise subject to federal or state regulations."
7

8 **Q. DOES THE SCTC OPPOSE THE INTRODUCTION OF NEW**
9 **TECHNOLOGIES AND SERVICES IN THE RURAL AREAS OF SOUTH**
10 **CAROLINA?**

11 **A.** No. Along with technological innovation comes exciting new services and
12 perceived cost savings. VoIP has come a long way since its introduction to the
13 general public and it is widely used in a number of locations and variations.
14 Member Companies of the SCTC have always tried to remain on the cutting
15 edge of technology in their deployment of services. No member or members of
16 SCTC have a desire to preclude any party from deploying the latest technology
17 to citizens of South Carolina that will serve to enrich their lives. SCTC
18 members have deployed a network that has as its primary goal to serve each
19 and every customer within its area of service. SCTC member companies
20 recognize and appreciate this obligation.

21 There is a strong desire to see that any new service that is introduced
22 recognizes that the public policy of Universal Service must be adhered to and

1 any new provider must recognize the importance of Universal Service and not
2 just mention the obligation with the intention of skirting their responsibilities.

3 TWCIS in South Carolina has indicated that they will follow the rules as long as
4 there are rules in place that apply to them, but if there are no rules or if TWCIS
5 can argue that the rules do not apply to them, then they feel there is no
6 obligation and they may escape all responsibility to the customers of South
7 Carolina. A main point that is missed many times is that all rural customers are
8 entitled to affordable service; a fact new entrants fail to be fully cognizant of in
9 their provision of services that compete with the incumbent.

10

11 **Q. SHOULD VOIP PROVIDERS CONTRIBUTE TO UNIVERSAL SERVICE?**

12 **A.** Yes. VoIP service requires the use of the local loop and, therefore, all VoIP
13 providers should be required to contribute to USF to help make services
14 available and affordable for everyone.

15

16 **Q. WHY IS IT IMPORTANT FOR THE COMMISSION TO ADDRESS PUBLIC**
17 **POLICY ISSUES RELATED TO VOIP SERVICES?**

18 **A.** A key question in considering whether the provision of VoIP service is in the
19 public interest for South Carolinians is whether or not the provision of the
20 service will lessen or exacerbate the "digital divide" between rural and urban
21 customers. If key public policy issues are not fully and adequately addressed
22 prior to allowing the provision of such service, the divide will almost certainly
23 get wider.

1 Q. DOESN'T TWCIS' APPLICATION AND TESTIMONY INDICATE THAT
2 TWCIS WILL ABIDE BY APPROPRIATE RULES AND PUBLIC INTEREST
3 POLICIES?

4 A. TWCIS says they will support universally available telephone service at
5 affordable rates but, as always, the devil is in the details. If the Commission
6 examines TWCIS' statements in detail, it will see the inconsistencies. For
7 example, TWCIS states it will comply with applicable Commission requirements
8 related to universal service obligations, while at the same time expressly states
9 its intention to move its service offerings to a non-regulated entity. Presumably,
10 if the state does not regulate TWCIS' service, TWCIS would argue that any
11 revenues it receives from the provision of VoIP service should not be assessed
12 for purposes of State USF. In other words, TWCIS argues it will comply with
13 applicable obligations while at the same time making arguments that suggest
14 these obligations are not applicable to TWCIS.

15

16 Q. SHOULD THE COMMISSION ALLOW TWCIS TO OPERATE IN THE RURAL
17 LEC AREAS OF SOUTH CAROLINA?

18 A. No. We believe there are just too many unresolved issues to allow TWCIS the
19 approval they seek. As stated, the main reason TWCIS can offer what appears
20 to be a lower rate for customers with high toll usage is because of unequal
21 regulatory treatment and the ability to limit service to the more densely
22 populated service areas. We urge the Commission to deny TWCIS' petition
23 due to the adverse impact on availability of universal service in the rural areas.

1 TWCIS seeks certification as a telecommunications service provider in order to
2 obtain interconnection services from ILECs but will not be providing
3 telecommunications services once it moves its service offering to a non-
4 regulated entity as stated in Ms. Patterson's testimony & TWCIS' petition.

5

6 **Q. WHAT DOES SCTC REQUEST THAT THE COMMISSION DO IN THIS**
7 **MATTER?**

8 **A.** For the reasons provided in this testimony as well as the testimony of Mr.
9 Staurulakis, Inc., the SCTC respectfully requests that the South Carolina Public
10 Service Commission deny TWCIS' application due to the important public policy
11 concerns and the adverse impact on availability of affordable local exchange
12 service in the rural areas of South Carolina.

13

14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 **A.** Yes, it does.

1 Q [Mr. Bowen] Mr. Oliver, would you please give a summary
2 of your testimony?

3 A Yes, thank you. I'm here today presenting testimony on
4 behalf of Home Telephone Company, Inc., Farmers Telephone
5 Cooperative, Inc., Fort Mill Telephone Company d/b/a
6 Comporium Communications, Inc., PBT Telecom, Inc., and
7 St. Stephen Telephone Company, all collectively referred
8 to here as the rural LECs, as well as the South Carolina
9 Telephone Coalition or the SCTC, in relationship to the
10 Time Warner Information Services of South Carolina, LLC,
11 or Time Warner's request to expand their certificate in
12 order to provide services into areas served by the rural
13 LECs.

14 On behalf of the rural LECs and the SCTC, I
15 respectfully request that the Commission deny Time
16 Warner's petition. The petition should be rejected as it
17 fails to meet public interest requirements and because of
18 the potential adverse impact approval could have on the
19 availability of affordable local exchange service within
20 the rural LECs' serving areas.

21 Time Warner seems to adopt conflicting positions in
22 testimony supporting their application. While applying to
23 this Commission for authority to expand service into the
24 rural LECs area, Ms. Patterson also attempts to argue
25 that the Commission really has no authority in this

1 matter. She indicates that the Federal Communications
2 Commission, or the FCC, has preempted state regulation of
3 Internet protocol or IP-based voice services, also known
4 as Voice over Internet Protocol, or VoIP services. We
5 would point out however that from a customer's perspective,
6 the kind of VoIP service that Time Warner proposes to
7 provide is really no different than traditional telephone
8 service. The customer picks up the phone, places a local
9 or a long distance call and talks to someone at the other
10 end. In effect, Ms. Patterson states the only difference
11 is that IP technology is used to transport the call. We
12 strongly disagree with Ms. Patterson's contention that
13 the FCC has preempted state authority in this case. It's
14 true that the FCC did preempt the Minnesota Public
15 Utilities Commission from regulating Vonage's VoIP service;
16 however, the FCC was very explicit in delineating those
17 characteristics that justified this preemption and ruled
18 only on a narrow jurisdictional question. Time Warner has
19 not demonstrated that its VoIP product has the same
20 characteristics as Vonage's DigitalVoice service, which
21 is required in order for the state preemption to apply.
22 In effect, the FCC simply found that it was impossible to
23 separate Vonage's services into interstate and intrastate
24 components because Vonage could not identify the
25 geographical location of its customer. Yet, it appears

1 that Time Warner's service is location specific and can
2 only be used in the location where the service is ordered.
3 There appears to be no jurisdictional issue related to
4 Time Warner service.

5 State law does provide that in determining whether
6 or not to grant a certificate to a carrier seeking to
7 furnish local telephone service in the service area of an
8 incumbent LEC that the Commission should take a number of
9 factors into consideration. The Commission may require a
10 showing that the evidence that the service that will be
11 provided will not adversely impact the affordability of
12 local exchange service and that the provision of the
13 service will not otherwise adversely impact the public
14 interest. The selective provision of services by Time
15 Warner will likely have an adverse impact on the
16 availability of affordable local exchange services,
17 particularly in areas served by rural phone companies.

18 Ms. Patterson's testimony clearly states that Time
19 Warner intends to withdraw its retail tariff offering
20 once a new non-regulated entity is created to provide the
21 retail voice services currently being offered. Time Warner
22 would not contribute to State Universal Service Funds,
23 except perhaps on a temporary voluntary basis, and such
24 revenues would most likely not be assessed for contributions.

25 We would respectfully ask that the Commission take

1 notice that Time Warner is not a small startup company
2 trying to enter the rural marketplace, but rather a large,
3 highly specialized, national company that has the potential
4 to drastically impact the provision of telecommunication
5 services in rural South Carolina within a very short period
6 of time. Time Warner, according to its own information,
7 passes more than 588,000 homes within South Carolina,
8 which is almost a third of the total South Carolina homes.
9 In addition, Time Warner is the nation's second largest
10 cable company with nearly 11 million customers and passes
11 more than 18 million homes with 3 million broadband
12 customers in some twenty-seven states.

13 The rural portions of our state tend to have a
14 relatively low population density. However, even within
15 these rural areas, there are usually small towns or
16 communities that form pockets of higher density. As an
17 example, in my company, Home Telephone, we serve approximately
18 903 square miles with an average population density of a
19 little less than 26 customers per square mile. However,
20 when you examine our service area in detail, you'll find
21 that almost sixty percent of our subscribers reside in
22 less than five percent of our service area. This drops
23 the population density to less than 12 subscribers per
24 mile for the balance of the service area. In contrast,
25 the portion of our service area that Time Warner Cable

1 currently serves within our franchise area has an average
2 population density of approximately 120 subscribers per
3 square mile.

4 Population density is a good indicator of costs. One
5 of the main costs drivers for rural LECs is our loop
6 link. The loop is the facility that serves between the
7 central office and the end user's house. In sparsely
8 populated areas, there are fewer customers per mile and
9 many miles between the central office and the customer.
10 This creates rural loop costs many times higher than that
11 found in urban areas. In fact, the FCC itself has recognized
12 that rural loop costs can be up to one hundred times
13 higher than in urban areas. As stated earlier, Time Warner
14 generally only has facilities in the more populated areas
15 of these rural companies. The areas they serve tend to be
16 the least costly to serve, and therefore, the most profitable
17 portion of the rural carrier's service territory. The
18 impact of the Time Warner application could be the loss
19 of a rural company's, lower cost companies, leaving the
20 rural LEC only with the higher costs customers to serve.
21 This is important as rural companies like our urban
22 counterparts normally charge an average rate per subscriber.
23 In effect, subscribers in the higher density areas help
24 offset the costs of serving subscribers in low density
25 areas. The loss of the low cost, high density customers

1 could have the results of leaving a higher cost to be
2 spread over a smaller customer base. In effect, the
3 average costs of service goes up across the entire
4 service area.

5 We've estimated that Time Warner's facilities pass
6 approximately 1700 of our subscribers' homes. If we were
7 to lose these subscribers to Time Warner's VoIP service,
8 it could result in the loss of approximately 1.6 million
9 in annual revenues. It's important to note that the loss
10 in revenues would not result in any real decrease in our
11 costs. In fact, as a carrier of last resort in our area,
12 we would have an obligation to continue to serve all
13 requesting customers. We would be required to maintain
14 telephone plant in place in the event that a previous
15 customer, or a new customer moving into that area,
16 requested service from us. Yet, there would be no revenues
17 generated from the facilities while they stand dormant.
18 The overall net impact could be an average decrease in
19 revenues amounting to almost \$7 per subscriber per month
20 which would have to be recovered from our remaining
21 subscribers.

22 Cable TV companies build out their systems to reach
23 those customers that are most profitable to serve. There's
24 a risk that the current model of ubiquitous telephone
25 service could be replaced by a cable TV model, which only

1 provides service where it's profitable to serve. This
2 Commission has both a right and a duty to ensure that all
3 subscribers have access to affordable, basic telephone
4 service. Time Warner is not proposing to deploy ubiquitous
5 networks in South Carolina and in the rural areas, only
6 the incumbent rural telephone companies have been willing
7 to take on that obligation. We understand the tough
8 decisions that have to be made. The question becomes,
9 should we disadvantage the vast majority of the rural
10 customers to bring small benefits to a few? The approval
11 of this could result in small savings to large toll users
12 in an area where less than seven percent of our subscribers
13 reside; however, the net result could be increased
14 charges to the remaining ninety-three percent of our
15 subscribers.

16 It is important that all service providers recognize
17 the importance of Universal Service and not feel free to
18 avoid the obligation of supporting Universal Service
19 Funding at the earliest opportunity. Time Warner in South
20 Carolina has indicated that they will follow the rules as
21 long as there are rules in place that apply to them. But,
22 if there are no rules or if Time Warner can argue that
23 the rules do not apply to them, then they make escape all
24 Universal Service Funding responsibilities. A main point
25 missed many times is that rural customers are entitled to

1 affordable service, a fact new entrants often fail to
2 recognize as they seek to compete with the incumbent LEC.
3 VoIP service requires the use of the local loop, and
4 therefore, all VoIP providers should be required to contribute
5 to USF to help make services available and affordable for
6 everyone.

7 A key question in considering whether the provision
8 of VoIP services is in the public interest for South
9 Carolinians is whether or not the provision of these
10 services will lessen or increase the digital divide between
11 rural and urban customers. If key public policy issues
12 are not fully and adequately addressed prior to allowing
13 the provision of such service, this divide will almost
14 certainly get wider. Time Warner says that they will
15 support universally available telephone service at
16 affordable rates, but as always, the devil's in the
17 details. If the Commission examines Time Warner's
18 statements in detail, it will see the inconsistencies.
19 For example, Time Warner states that it will comply with
20 applicable Commission requirements related to Universal
21 Service obligations while at the same time expressly
22 stating its intent to move its service offerings to a
23 non-regulated entity. Presumably, if the state does not
24 regulate Time Warner's services, Time Warner could argue
25 that any revenues it receives from the provision of VoIP

1 services should not be assessed for purposes of State
2 USF. In other words, Time Warner could argue that it will
3 comply with the applicable obligations while at the same
4 time making arguments that suggest these obligations are
5 not applicable to Time Warner.

6 In closing, we believe that there are just too many
7 unresolved issues to allow Time Warner the approval they
8 seek. The main reason Time Warner can offer what appears
9 to be lower rates to customers with higher toll usage is
10 simply because of unequal regulatory treatments and the
11 ability to win its services to more densely populated
12 service areas. Time Warner seeks certification as a
13 telecommunications service provider in order to obtain
14 interconnection services from the ILECs but will not be
15 providing telecommunications services once it moves its
16 service offerings to a non-regulated entity as stated in
17 Ms. Patterson's testimony. We respectfully request that
18 the South Carolina Public Service Commission deny Time
19 Warner's application due to the important public policy
20 concerns and the adverse impact on availability of
21 affordable local exchange service in the rural areas of
22 South Carolina in which they seek to serve.

23 Q Thank you, Mr. Oliver. Please respond to any questions
24 the Commissioners or other counsel may have.

25 CHAIRMAN MITCHELL: Mr. Mustian?

1 MR. MUSTIAN: Thank you, Mr. Chairman.

2 ORS doesn't have any questions.

3 CHAIRMAN MITCHELL: Thank you, sir.

4 Mr. Ellerbe?

5 MR. ELLERBE: Thank you, Mr. Chairman.

6 CROSS EXAMINATION BY MR. ELLERBE:

7 Q Good afternoon, Mr. Oliver. Are you familiar with the
8 stipulation, the standard stipulation that the Coalition
9 companies have entered into with CLECs applying to be
10 certified?

11 A Not in great detail. I'm vaguely familiar with it.

12 Q I've got one that I'm going to ask you to look at that I
13 think is fairly standard.

14 A *[Witness is Furnished Document]*

15 Q What we have, just for the record is a stipulation in
16 Docket No. 2003-361-C, which is the application of
17 Southwestern Bell Communications. You see that sir?

18 A *[Examining]* Yes.

19 Q This was Exhibit 1 in that docket and signed by Ms.
20 Shealy on behalf of the applicant and Ms. Fox on behalf
21 of the Telephone Coalition. You see that, sir?

22 A I see that, page 3.

23 MR. ELLERBE: First of all, Mr.

24 Chairman, we'd ask that this be entered

25 into the record as the next exhibit,

1 please.

2 CHAIRMAN MITCHELL: We'll do that, Mr.
3 Ellerbe.

4 MR. BOWEN: Mr. Chairman, we don't
5 have an objection to it being marked for
6 identification. We're just not sure it's
7 relevant. If you'd like to mark it for
8 identification and go ahead and cross
9 examine on it like that; we'd just like to
10 reserve our ability to object to it.

11 MR. ELLERBE: No objection to that.

12 CHAIRMAN MITCHELL: We'll recognize
13 that. That will be Hearing Exhibit #4 and
14 entered into the evidence of this case.

15 [HEARING EXHIBIT #4 MARKED FOR
16 IDENTIFICATION]

17 Q Mr. Oliver, read with me paragraph one. "SCTC., — which
18 is the Coalition of rural companies, correct?

19 A Correct.

20 Q ...does not oppose the granting of a statewide
21 Certificate of Public Convenience and
22 Necessity to Southwestern Bell, provided that
23 the Commission makes the necessary findings to
24 justify the granting of the certificate, and
25 provided the conditions contained within this
26 stipulation are met.

27
28 There are, as you and I know, there are some conditions
29 that are a part of this stipulation that then became part

1 of the order. Is that correct, Mr. Oliver?

2 A As far as I understand it, yes.

3 Q Those conditions primarily include the company agreeing
4 only to serve in non-rural areas and then giving notice
5 to the Commission and to the Coalition companies before
6 beginning to offer service in rural areas. Is that
7 correct, sir?

8 A That's my general understanding, yes.

9 Q Is this the general approach, as far as you understand
10 it, Mr. Oliver, that the Coalition companies have taken
11 with respect to CLECs applying to provide service in
12 South Carolina?

13 A It has been the general position I think that we've
14 taken, primarily because they have indicated in signing
15 on to the stipulation that they do not intend to provide
16 local service within the rural areas.

17 Q The stipulation specifically provides that there will be
18 an opportunity given for the rural companies to seek —
19 under paragraph four, during the notice period — about
20 half way down,

21 [d]uring the notice period the rural incumbent
22 LEC will have the opportunity to petition the
23 Commission to exercise all rights afforded it
24 under federal and state law.

25
26 You read that, sir?

27 A Yes.

1 Q That is what I talked to Mr. Staurulakis about a few
2 minutes ago where the companies can decide when they get
3 a request should we notify the Commission that we're
4 invoking our rural exemption, correct, sir?

5 A Correct. Again, a very important distinction here however
6 are these providers have had no facilities within these
7 rural areas. So, therefore, they have not had the
8 capability of providing service within the rural areas.

9 Q So, you don't have an objection to a company being
10 certified on a statewide basis as long as you don't think
11 that company's ever going to actually come in and compete
12 with you?

13 A I guess that kind of goes on its surface. Why would you
14 be opposed to that in that situation?

15 Q The Coalition has entered into these stipulations by which
16 all CLECs prior to this application have been allowed to
17 get a statewide certification, correct, sir?

18 A Correct, but again, a stipulation that says they will not
19 provide service in those rural areas.

20 Q Until they give you notice?

21 A Correct.

22 Q One way of giving notice is to send you a proposed
23 interconnection agreement, correct?

24 A I'm not positive that would be the official notification
25 or not, but I would assume it could be.

1 Q MCI has done that some time within the last few months,
2 correct?

3 A They have requested interconnection, yes.

4 Q Did they give you notice pursuant to one of these
5 stipulations, Mr. Oliver?

6 A I would have to ask counsel whether or not that was
7 appropriate notice or not.

8 Q Can we assume that counsel would have raised an objection
9 if the proper notice hadn't been made?

10 A Again, I'm not in a position to equate the request for
11 interconnection with the invoking of this particular
12 section of the stipulation. I would defer to counsel for
13 that.

14 Q Are you aware that a CLEC has to be certified before, in
15 the area served by an incumbent, before it can ask to
16 negotiate terms for interconnection, Mr. Oliver?

17 A I would defer again to counsel and to Mr. Staurulakis
18 earlier. I don't pretend to be an expert in those areas.

19 MR. ELLERBE: Mr. Chairman, we'd offer
20 it into evidence.

21 MR. BOWEN: We don't think it's
22 relevant, but we're not going to object to
23 it.

24 [HEARING EXHIBIT #4 ACCEPTED INTO
25 EVIDENCE]

1 Q [Mr. Ellerbe] Mr. Oliver, I want to ask you some questions
2 now about the CLEC activities of the rural companies that
3 you're representing today.

4 A I'll answer to the best of my ability.

5 Q I was interested to see, I think just this week, an
6 interconnection agreement between your company, signed by
7 you, and BellSouth was filed with the Commission.

8 A That's correct.

9 Q Does that indicate that your company is going to be
10 offering services in BellSouth territory?

11 A We're offering services on Daniel Island at this point in
12 time.

13 Q Is Daniel Island BellSouth territory?

14 A It is.

15 Q Are you operating as a CLEC with respect to Daniel
16 Island?

17 A Yes, we are.

18 Q Is that cream-skimming, Mr. Oliver?

19 A We have fiber to the home facilities in that location to
20 every home on the Island, whereas I don't believe the
21 incumbent LEC has that. So, I'm not sure that that would
22 be.

23 Q But, you only have facilities in Daniel Island, correct?

24 A That was a purchased acquisition, yes.

25 Q Which is a high end operation with a lot of people who

1 can pay for your services?

2 A It is. It's also a startup operation with a lot of high
3 costs where we still don't have necessarily a lot of
4 customers.

5 Q You're going in to a targeted area within BellSouth
6 territory, and you're not offering services in other
7 parts of BellSouth territory?

8 A That's correct. If the assumption here is that that doesn't
9 seem quite equitable, I'll point out again that BellSouth
10 is not protected by the rural exemption such as the rural
11 areas. The purpose for the rural exemption was to provide
12 for the fact that the FCC recognized, Congress recognized
13 that there were certain parts of the country that it
14 might not be appropriate for competition because of high
15 costs. Other areas of the country were deemed to be
16 subject to competition at the get-go, and the BellSouth
17 territories, in fact all of the CLEC territories were
18 deemed to be that so it's somewhat apples and oranges.

19 Q Congress provided — I'm glad you made that point, Mr.
20 Oliver. Congress provided a statutory protection scheme
21 for the rural companies, correct?

22 A Correct.

23 Q That's what I discussed with Mr. Staurulakis, which is,
24 when you get a request for interconnection, a bona fide
25 request for interconnection from a certified carrier, you

1 then have the option of notifying this Commission that
2 you're invoking your rural exemption, correct?

3 A That's correct. Again, I don't pretend to be an expert in
4 this. I think the significant point though is, is at that
5 point you're arguing about the rates of the inter-
6 connection. This Commission has the ability under state
7 statute to determine whether it's in the public interest
8 for an entity to be able to come in to the higher costs
9 rural areas and offer the service to start with. That's
10 not something that's offered under the federal statutes,
11 so the only time we have to argue this particular
12 argument is right now in this hearing, at this particular
13 point.

14 Q Mr. Oliver, I thought you told me that Congress provided
15 protection when it set up the rural exemption?

16 Q Just as Congress provides many things. It is full of many
17 exceptions. Again, we would prefer to rely on the auspice
18 of this Commission and under our state statutes. The
19 Federal Act simply gives us the ability to argue what the
20 rates should be. The state statute gives this Commission
21 the right to determine whether it's in the public
22 interest to allow companies to come in to rural high
23 costs areas and in effect cherry-pick or cream-skim just
24 particular areas.

25 Q Let me ask you about some other CLEC activities of rural

1 companies or Coalition members. Farmers Telephone
2 Cooperative provides service in certain Verizon areas.
3 Isn't that correct, Mr. Oliver?

4 A To the best of my knowledge, yes, sir.

5 Q West Carolina Rural Telephone Cooperative provides CLEC
6 services in certain Verizon areas. Isn't that correct
7 sir?

8 A Correct, and again, that's something that probably
9 several hundred other companies in this state do because
10 those are areas that have been deemed under the federal
11 statute to be subject to competition. I hear you, but I
12 don't know that it has any distinction whatsoever in this
13 particular case.

14 Q Mr. Oliver, I'm now going to ask you to take a look with
15 me at an order relating to an application by PBT Communications
16 to go into ALLTEL's service area.

17 A Okay.

18 Q Just for the record, this is Order No. 2002-166, dated
19 March 6, 2002, in Docket No. 2001-450-C relating to the
20 application of PBT Communications for amendment of its
21 Certificate of Public Convenience and Necessity. Are you
22 familiar with this, Mr. Oliver?

23 A Again, no more so than I was with Farmers, just a general
24 knowledge.

25 Q PBT is one of the companies that you're representing as

1 you testify today, correct?

2 A That's correct.

3 Q ALLTEL in South Carolina has a rural exemption as of
4 today, correct sir?

5 A To the best of my knowledge. Again, I have no reason to
6 doubt that.

7 Q Am I correct that by this Order PBT was allowed by this
8 Commission to extend its facilities into ALLTEL service
9 territory to provide service in competition with ALLTEL
10 in certain ALLTEL service territory?

11 A That appears to be what the Order said. I see what happens
12 is that the Commission conducted a hearing, and it
13 determined that it was in the public interest to allow
14 that. We're here stating that in this case, it is not in
15 the public interest. Again, it's a separate hearing, and
16 the Commission has at its discretion the ability to determine
17 whether this particular application meets those public
18 interest requirements. I would have to assume that PBT
19 was able to assure the Commission that it did.

20 Q In fact, Mr. Spearman testified that it would be in the
21 public interest because PBT would be offering different
22 services, and it would be helpful or beneficial to
23 customers to have choices to the services that PBT was
24 going to be offering.

25 A Again, apparently, they met their obligation of indicating

1 that it was in the public interest. Yes, I would agree.

2 Q That's an example, Mr. Oliver, unlike the other ones, as
3 you distinguished them. This is an example of a rural
4 ILEC extending services into a portion of the service
5 territory of another rural ILEC.

6 A It is, and it was, again, it is a stand alone case. It's
7 not a precedent that says now every company can does this
8 otherwise we wouldn't be here today. So, again, they met
9 their obligation. We're contending that you've not met
10 that obligation today.

11 Q Is this an example of cream-skimming or cherry-picking,
12 Mr. Oliver?

13 A Apparently in the eyes of the Commission, it must not
14 have been. They made the finding. I didn't.

15 MR. ELLERBE: Mr. Chairman, I think I
16 could ask you to take judicial notice of
17 this Order, but I would ask that instead
18 it be marked as an exhibit, the next
19 hearing exhibit.

20 CHAIRMAN MITCHELL: That will be
21 Hearing Exhibit #5 and entered into the
22 evidence of this case.

23 [HEARING EXHIBIT #5 MARKED FOR
24 IDENTIFICATION AND ACCEPTED INTO EVIDENCE]

25 CHAIRMAN MITCHELL: As a point of

1 clarification, I think I did this but if I
2 didn't, we want to clarify that Exhibit #4
3 has been entered into the evidence of this
4 case. I think I did that almost twice. We
5 want to clarify that.

6 MR. ELLERBE: Thank you, Mr. Chairman.

7 Q [Mr. Ellerbe] Mr. Oliver, are you aware that the rural
8 companies have faced competition from wireless companies
9 over the last few years?

10 A Yes, it's been — and I've probably testified in front of
11 this Commission — it's been a very interesting point.
12 Again, there's nothing simple about telecommunication
13 industry today. The form of competition that the rural
14 carriers have faced from wireless providers have been
15 primarily competition in regards to our access revenues.
16 In fact, it's been primarily as a result of this type of
17 competition that the South Carolina companies have been
18 extremely active in pursuing both the Interim LEC Fund
19 here in the state and the State Universal Service Fund.
20 Through those mechanisms, we were able to transition a
21 portion of those access fees into the Universal Service
22 Funds which has helped, I think, to some extent protect
23 against increases to the rural subscribers because of the
24 loss of access to the wireless carriers.

25 Q But, wireless usage continues to increase and continues

1 to provide competition that decreases access revenues to
2 your companies?

3 A It certainly has cut into the rate of growth and perhaps
4 has even led to a decrease in access minutes. Again,
5 we've been able to decrease those access rates by perhaps
6 as much as sixty percent, maybe even seventy percent, so
7 that it's mitigated the potential revenue loss to the
8 companies.

9 Q Has that competitive activity from wireless companies
10 caused your company to file an application with this
11 Commission asking to increase local rates, Mr. Oliver?

12 A As I just explained, the vast majority of that has been
13 mitigated because those revenues are now being recovered
14 from the State Universal Service Fund. So, the loss of
15 the access revenues has not resulted in a request for
16 local service increases. It has instead resulted in
17 additional Universal Service funding.

18 Q I think you and I discussed this a couple of years ago
19 that since you, in fact, since you have been working for
20 Home Telephone Company, you haven't seen a general rate
21 case filed by your company?

22 A Not a general rate case, but again, that's been primarily
23 because of the nature of both this Commission and the
24 companies within South Carolina. We progressively sought
25 the adoption of the Interim LEC Fund, which entailed a

1 rate rebalancing which indeed did increase our local
2 rates from a little over \$8 to almost \$14. So, it's because
3 of the foresight of this Commission, because of looking
4 ahead and being in a position to anticipate the issues
5 that we're going to deal with, then we haven't had to have
6 that rate increase that you refer to. But, rates have gone up.

7 Q Just for the record, how long have you been working for
8 Home Telephone Company?

9 A I just celebrated 20 years this past October.

10 Q The same thing is true of the other companies that you're
11 representing today, none of them have been in for a rate
12 increase to this Commission?

13 A I have no knowledge one way or the other of that.

14 Q Are you aware of any of them coming in?

15 A I'm not aware of it, but I'm not aware that they haven't
16 either.

17 Q Isn't it also true, Mr. Oliver, that your company has been
18 able to, during this time where you're facing the issues
19 that you describe, your company has been able to upgrade
20 its facilities?

21 A Absolutely. I think that not only us but most rural
22 carriers have been able to maintain current plant. It's
23 an ongoing process. As we talked earlier, technology
24 changes almost annually and due again to foresight both
25 in the Federal Universal Service funding mechanisms and

1 State Universal Service funding mechanisms, which I will
2 point out are based on historical costs, so as we spend
3 the money to upgrade the plant, we've been in a position
4 with these funding mechanisms to recover parts of those
5 costs.

6 Q You've been able to do things like, invest in buying the
7 facilities on Daniel Island, so you've got a new service
8 area on Daniel Island, correct, sir?

9 A Well, again, those investments are a totally stand alone
10 and deregulated basis, so they don't necessarily tie back
11 to the fact that we have a regulated entity if that's what
12 you're referring to.

13 Q You've also upgraded and are offering broadband services
14 in your service areas, correct?

15 A Correct, and again, this is a very important point, I
16 think, is that what we attempt to do and most rural
17 carriers attempt to do is bring a level of service to our
18 subscribers and it's only through the support of this
19 Commission and the various funding mechanisms that enable
20 us to do that.

21 Q You're also offering cable TV use or video services,
22 aren't you, Mr. Oliver?

23 A That's not offered directly through our company. We do
24 have lease arrangements, some common ownership but not
25 through our company, no.

1 Q [Witness is Furnished Document] Mr. Oliver, do you
2 recognize the set of documents that I've given you?

3 A [Examining] I'm probably embarrassed to say no. I very
4 seldom get out to web pages.

5 Q Just for the record, this is several pages from the Home
6 Telephone Company, Inc. website. Do you recognize that
7 it's your company's website, Mr. Oliver?

8 A It certainly appears to be. It looks like they did a very
9 good job with it, I might add.

10 Q My copying, just for the record, my copying is not great.
11 I printed it myself, and I cut off some parts of it. But,
12 I believe that the point that I'm trying to make can be
13 made. I wouldn't mind substituting a corrected copy if
14 there is any issue about it.

15 The first page, Mr. Oliver, is the homepage of the
16 company. You see that, sir?

17 A Yes.

18 Q Do you see that we've got a headline there: *HomeStar*
19 *Entertainment Television, Subscribers: HDTV is Now*
20 *Available?*

21 A Yes. We have billing arrangements with Berkeley Cable TV,
22 which typically is the entity that offers our cable TV
23 services. So, we do marketing, sales, billing.

24 Q Looking on the third page of the packet, the first full
25 sentence. It says,

1 The company's commitment to technology is
2 apparent in its all-digital central office and
3 its expanded telecommunications services like
4 cable television, long distance, paging and
5 high-speed Internet access.
6

7 Do you see that sir?

8 A [Examining] No, which page are you on?

9 Q I'm on the third page of the packet.

10 A The third page of the packet. The one that starts, Home
11 employs 127?

12 Q Exactly, yes.

13 A Okay. I'm with you.

14 Q Did I read that sentence correctly?

15 A It sounds like it, yes.

16 Q It is correct that your company offers a full range of
17 what is referred to here as telecommunications services
18 including high-speed Internet access, cable television
19 and long distance and local telephone service?

20 A Yes, we market all of those services as a full service
21 provider. The long distance, of course, is provided by a
22 long distance subsidiary. The paging and the high-speed
23 Internet access are offered — the access itself is
24 offered vis-à-vis, as Mr. Staurulakis indicated, a
25 regulated tariff on the interstate side. The Internet
26 service is offered as a deregulated service through the
27 phone company, and the cable service is offered through
28 an affiliated company, Berkeley Cable Television. I'm not

1 sure, I think we're splitting hairs here.

2 Q Your company, according to your own webpage, is offering
3 all these services and marketing to your customer base,
4 correct, sir?

5 A Correct. We're not quite the conglomerate that Time Warner
6 is, but we do offer an array of services.

7 Q Yet, your job here today with respect to Home Telephone
8 Company is to prevent Time Warner from being able to offer
9 telephone services in addition to its cable TV services
10 and high-speed Internet services that it currently offers
11 in part of your service area?

12 A You could characterize it that way. My characterization
13 would be is it is an attempt to stop Time Warner from
14 coming in and cherry-picking only those most profitable
15 customers to serve with telephone service then leaving me
16 to serve the remainder of those customers' telephone
17 service.

18 Q What area are you franchised in for cable TV purposes?

19 A I honestly couldn't tell you.

20 Q Do you serve every customer with cable TV?

21 A No, sir, we do not. It's not profitable to do so.

22 Q Do you cherry-pick cable TV customers?

23 A Cable TV is a deregulated service. It's a for-profit
24 service. It has to stand on its own. I think you're
25 making an extremely important point here. What we're

1 attempting to do is make sure that the current cable TV
2 model, which only serves the most profitable customers,
3 which is where Time Warner is today, does not become the
4 telephone model. We have a very strong sense of Universal
5 Service within this country. Telephone service has been
6 established to serve every customer, not simply the
7 profitable customers, and our concern is that Time Warner
8 is attempting to substitute the cable model in place of
9 the Universal Service model for telephone service.

10 Q You just don't want any competitors in your area?

11 A We want competitors on a level playing field. Again, it's
12 not competitive whenever you can come in and serve only
13 those most profitable customers and leave the balance of
14 that service area for the local LEC to have to serve.

15 Q Are you asking this Commission to require Time Warner
16 Cable to build out your entire service area before it can
17 be allowed to serve any customer in your service area?

18 A I would ask that the Public Service Commission use the
19 authority that's granted to it under state legislation to
20 determine whether it's in the public interest to allow
21 Time Warner to come into the areas that they have specifically
22 indicated they will serve. If the Public Service Commission
23 determined that it is in the public interest to require a
24 build out schedule before they allowed a carrier to come
25 in, I think that would be totally appropriate.

1 In fact, if I was so bold, I would recommend that
2 that be exactly what this Commission do is require at
3 least a build out so that any carrier coming in would be
4 required to serve all the services throughout the service
5 territory.

6 Q That's what you're asking the Commission to do, require
7 any CLEC that wants to provide facilities-based
8 competition in any part of your service area despite the
9 fact that you've got the Interim LEC Fund, despite the
10 fact that you've got the Universal Service Fund revenues
11 flowing to your company, you want the Commission, in
12 addition, require any CLEC coming into your service area
13 to have to build out the entire network?

14 A I think it's important, again, let's take a look in our
15 company's case, we received approximately thirty percent,
16 maybe thirty-five percent of our revenues from those
17 funds you just mentioned, that means the other sixty-five
18 percent or so are coming directly from the end user. So,
19 the reason we can do that is, as I say in my testimony,
20 is because we charge average rates. We've got customers
21 where we have five or ten customers per square mile. We
22 have other areas where we have several hundred customers
23 per square mile. We're able to average those rates out
24 and offer a service ubiquitously throughout the service
25 territory because of the fact that we are not serving

1 only the low cost customers, we're serving everyone.

2 Q You want this Commission to do that with respect to Time
3 Warner's application at the same time that you're
4 expanding your high-speed Internet offerings and your
5 cable TV offerings, and you're now offering HDTV?

6 A The HDTV is offered through a cable subsidiary. What we're
7 talking about is what's in the public interest for tele-
8 communications service within this state. This Commission
9 does not regulate cable TV services but it does regulate
10 and it does have the authority to make a public interest
11 finding on a carrier coming in to serve telecommunications
12 services within South Carolina.

13 Q Mr. Oliver, I'm going to show you a section now from the
14 PBT phonebook.

15 MR. ELLERBE: Mr. Chairman, did I ask
16 that that last exhibit —

17 CHAIRMAN MITCHELL: I don't believe
18 so, Mr. Ellerbe.

19 MR. ELLERBE: I'd like to ask that
20 that last exhibit be entered into the
21 record as the next hearing exhibit.

22 CHAIRMAN MITCHELL: That'll be Hearing
23 Exhibit #7 and entered into the evidence
24 of this case, Mr. Ellerbe. The last one
25 will be Hearing Exhibit #6.

1 [HEARING EXHIBITS #6 & 7 MARKED FOR
2 IDENTIFICATION AND ACCEPTED INTO EVIDENCE]

3 MR. ELLERBE: Thank you, Mr. Chairman.
4 I'm just about finished.

5 CHAIRMAN MITCHELL: That's all right,
6 you take all the time you need, Mr. Ellerbe.

7 MR. ELLERBE: Thank you, sir.

8 Q [Mr. Ellerbe] Mr. Oliver, I'm going to show you a few
9 pages from the PBT phonebook. Are you familiar whether
10 it's the case that PBT also provides high-speed Internet
11 services and cable TV services?

12 A [Witness is Furnished Document]

13 [Examining] I'm not familiar with their corporate
14 structure, so I don't know if it's done through PBT or
15 through a subsidiary or how it's handled.

16 Q Look with me, if you would, on the second page of the
17 packet which is labeled page 3, it says,

18 Why choose PBT? Consolidated billing and
19 customer service are a great advantage to PBT
20 customers. You could receive five different
21 bills from five different companies — local
22 telephone service, long distance, Internet,
23 satellite, and wireless. With PBT you can
24 combine all of those into a single bill and
25 write a single check each month.

26
27 Now, that's PBT in their phonebook advertising not only
28 their telephone services but their ability to offer a
29 whole range of telecommunication services, correct?

1 A [Examining] I think it's called bundling, yes.

2 Q But, PBT and Home and the other companies that you're
3 representing today want Time Warner not to be allowed to
4 compete with this type of service offerings by being able
5 to offer telephone service in addition to high-speed
6 Internet and cable television?

7 A Well, again, it's not that we don't want to. Time Warner
8 is refusing to compete with these services because these
9 services are offered throughout the service territory.
10 Time Warner wants to come in and only provide the service
11 in the most densely populated areas typically within the
12 area. We offer the phone service to everyone within the
13 franchise area. Again, you're mixing apples and oranges.
14 You're not asking to do the same thing we're wanting to
15 do. If you were, we would have less concern with this
16 application.

17 Q Just for the record, we've already established that PBT
18 offers these services in a small part of ALLTEL's service
19 area, correct, Mr. Oliver?

20 A The assumption is, is this Commission found that to be in
21 the public interest. I have no reason to doubt that finding.
22 We're saying in this case that you're filing doesn't meet
23 that. I'm not sure — you've said that a couple of times —
24 I'm just not sure how it's germane to this particular case.

25 MR. ELLERBE: Mr. Chairman, we would

1 ask that the pages from the PBT phonebook
2 be marked as the next hearing exhibit, or
3 excuse me, introduced into evidence as the
4 next hearing exhibit.

5 CHAIRMAN MITCHELL: Okay, that will be
6 Hearing Exhibit #7 and entered into the
7 evidence of this case, Mr. Ellerbe.

8 [HEARING EXHIBIT #7 MARKED FOR
9 IDENTIFICATION AND ACCEPTED INTO EVIDENCE]

10 Q [Indicating] I'm just going to ask you about some of the
11 numbers that you put in your testimony.

12 A Okay.

13 Q 1700 customers producing 1.6 million in revenues.

14 A Yes.

15 Q If my math is right, that means — and that's annual
16 revenues?

17 A Correct.

18 Q This is Home Telephone Company?

19 A Correct. These are average numbers.

20 Q Exactly. I understand you averaged it. These are telecom
21 revenues only?

22 A Correct.

23 Q This doesn't include high-speed Internet, correct?

24 A It includes the access, again, because that's a federally
25 regulated tariff item, so to the extent that there are

1 DSL revenues in there that are being operated on a
2 regulated basis, yes those are in there.

3 Q But, there're also deregulated high-speed Internet access
4 revenues that aren't included. Is that correct?

5 A No, the deregulated services, the actual Internet provider,
6 not the access to the Internet.

7 Q Those unregulated services are not in this?

8 A No, sir.

9 Q The video or the cable revenues are not in this, correct?

10 A No, sir.

11 Q I believe that works out to on an annual basis, one
12 customer produces approximately \$941?

13 A I'll trust your math.

14 Q Which means on a monthly basis, those customers are producing
15 about \$78.43, is what I came out with, in revenue?

16 A Again, that sounds about right.

17 Q Are you aware of the per line cost number for residential
18 and I think business service also that Mr. Staurulakis
19 presented to this Commission in the last Universal Service
20 Fund case?

21 A I assume you're talking about the cost of strictly the
22 regulated local service, is that the one you're referring to?

23 Q The USF cost.

24 A Sure.

25 Q And that was about, just over \$58?

1 A That sounds about right. Again, I'll point out that again
2 we're mixing apples and oranges because we're dealing
3 with total revenues, which includes a number of other
4 services, and we're comparing that to the costs of only
5 the local telephone service.

6 Q Do you know what the costs of the other services that you
7 provide?

8 A I couldn't tell you from the stand, no, sir.

9 Q So, you don't know the costs?

10 A I don't.

11 Q But, we've got about a \$20 spread between revenues from
12 these customers and the cost figure, and I agree with you.
13 I agree with your characterization, \$58 is the Universal
14 Service Fund costs on a per line basis for basic residential
15 and your business line, right?

16 A Correct. But, again, those two numbers mean absolutely
17 nothing in isolation. I mean, our total costs could be
18 \$90, and we could be losing a lot of money. The comparison
19 you're drawing, you can't really draw a conclusion from it.

20 Q Those customers are generating a lot of revenue to the
21 company?

22 A Absolutely.

23 Q Those customers, in addition to paying you what they're
24 paying you, those customers are also perhaps paying
25 another long distance company. If they're a customer of

1 AT&T or MCI, they may be paying additional bills to those
2 companies?

3 A That's correct.

4 Q With the Time Warner service offering, a Time Warner
5 customer that's also got cable and Road Runner will be
6 paying about \$40 a month, correct, Mr. Oliver?

7 A I don't know. Could you share with me how you derived
8 that number?

9 Q What Time Warner charges for its digital phone service. I
10 thought it was in your testimony.

11 A It may be. I'm just asking you to clarify what you're
12 asking me.

13 Q I'm asking you what Time Warner charges for the telephone
14 service.

15 A Before or after you withdraw your tariff? I mean, are you
16 talking about currently?

17 Q Yes, sir.

18 A I think from those tariff rates, and again, as you say, I
19 think it's in the neighborhood of \$40.

20 Q Customers might find that — customers in your service
21 territory might find that to be an attractive service
22 offering, correct, Mr. Oliver?

23 A Those customers that are paying very high toll rates
24 could very likely find that attractive. Again, our basic
25 local service under the auspices of this Commission are

1 \$14.35. So, we have to make a service available to any
2 customer that wants it for that \$14.35.

3 Q And you want this Commission to prevent customers in your
4 area from having the choice to choose the Time Warner
5 offering with its array of cable TV and Internet services
6 and phone services or make the choice to choose Home or
7 PBT services which are also cable services and high-speed
8 Internet services and telephone services?

9 A You're coming to this Commission and you're requesting
10 the authority to provide telecommunications services to
11 customers within a very narrowly defined geographical
12 area. We're required to do that throughout our service
13 area. We're talking about telephone services, and I know
14 you keep wanting to mix that up with other services. If
15 you want to compete equally with us to provide telephone
16 services then we're saying that yes there ought to be
17 maybe a build out requirement and you serve the entire
18 area. That's the telephone services that we're talking
19 about.

20 Q Again, you agree with me, the import of your testimony is
21 you want this Commission to prevent those customers from
22 having that choice.

23 A No, I want this Commission to make a public interest
24 determination as to whether or not in our company's case
25 providing what could potentially be a small benefit to

1 seven percent of our customers outweighs the potential
2 deficit to the ninety-three percent. I think that's the
3 decision this Commission has to make.

4 MR. ELLERBE: Thank you, Mr. Chairman.

5 No further questions.

6 CHAIRMAN MITCHELL: Thank you, Mr.

7 Ellerbe. Commissioners, any questions?

8 Commissioner Clyburn.

9 EXAMINATION BY COMMISSIONER CLYBURN:

10 Q You've been in the phone business for at least 20 years
11 as you stated earlier and just looking at the service
12 that Time Warner proposes to offer in terms of the
13 particular that they're offering to the public, do you
14 have any idea as to in terms of penetration rate or
15 switched rate — what are we looking at here realistically?
16 I know you said seven percent. I'm assuming the seven
17 percent figure you're referencing would include the overlap
18 in terms of the area in which they would be serving. Am I
19 correct?

20 A Correct.

21 Q So that's one hundred percent penetration?

22 A That's correct.

23 Q Is that a realistic number?

24 A Specifically for Time Warner, it's probably not. Again,
25 the difficulty we have is that we're in an age of very

1 rapid change. Number one, we're not sure how long Time
2 Warner will confine their services to strictly that area
3 so it could be a low number within a couple of years.

4 Number two, we have a lot of other types of service
5 providers out there. We've talked about the Vonage Order,
6 which again, we think is drastically different than what
7 Time Warner is offering. But those services, as Mr.
8 Staurulakis has indicated, we could have customers today
9 that are selecting some of those services that are also
10 taking revenues away. We've already talked about
11 wireless.

12 So, it's not a matter of what any one specific
13 service provider may or may not do. I think it's that
14 cumulative impact that this Commission has to be
15 concerned about. It's sort of that concept of bleeding
16 from a thousand wounds, I guess. Our concern is again, we
17 play this game on a level playing field and that the
18 Commission be cognizant of the fact that as additional
19 service providers come in they're not taking on the same
20 obligations, they're not providing the same type of
21 service, and therefore, is it in the public interest to
22 allow that service to come in under those terms and
23 conditions.

24 Q You said something I found curious just now. You said
25 they're not providing the same type of service. Therein

1 is the foundation for my question here or the main thing
2 I wanted to address here. VoIP is different than what I
3 would call plain old telephone service, am I right?

4 Someone brought up, if you lose power, you lose service.

5 A Correct. Part of, I think, the confusion around this —
6 whether it's intentional or whether it's just reasonable
7 parties with good intent misunderstanding — they are a
8 number of flavors of VoIP. What Vonage is doing for
9 instance is a totally different type of VoIP service. As
10 Time Warner's indicated, really all they're doing is
11 using Internet protocol technology, and technology has
12 changed over the years.

13 When I first started at Home Telephone, we still had
14 some analog switching equipment in, but we've been one
15 hundred percent digital. Just because we put in a
16 different technology, we didn't change the rules and the
17 regulations. So, I think it's curious at this point that
18 simply because a different technology is being used,
19 whereas all the underlying service stays very similar,
20 that we would consider that to now be somehow or another
21 subject to a totally different set of regulatory rules.
22 But, that's the strange nature of the beast that we're
23 struggling against today. There's tremendous confusion
24 about that, and as you've indicated, VoIP service is
25 dependent upon the public power supply; it's also

1 dependent in Time Warner's case on their ability to
2 maintain the signal over their cable TV plan.

3 Q I guess I'm asking you a third time: do you — I know
4 you're saying that Time Warner is but one applicant.
5 There are other providers out there, other options. But,
6 in terms of, a hundred percent certainty as we can get in
7 this business, would not an incumbent, would not the
8 rural LECs, would not a plain old telephone service
9 provider, as a strength be able to tell its customer that
10 no matter what happens out there, with as near certainty
11 as possible, you're going to have phone service if the
12 lights go out if this happens as opposed to an entity
13 like Time Warner?

14 A Yes, again, I can speak from my experiences, unfortunately,
15 having gone through that wonderful time of Hurricane Hugo
16 down in our area — for the most part we had very, very
17 little service outage to our telephone subscribers even
18 when the plant was on the ground.

19 As Mr. Ellerbe has indicated, we do also have cable
20 facilities; unfortunately, many of those were out for
21 weeks if not months. So, the liability standards of the
22 telephone industry are tremendously higher typically than
23 what you find in the cable or most other industries for
24 that matter.

25 Q To rest this now, this horse I'm beating, would that not

1 be of more comfort to the five intervenors here because
2 again, you do have that reliability, that particular
3 strength on your side as opposed to someone with a new
4 technology - you got reliability, that's on your side.
5 So, tell me how much of a threat of Time Warner or any
6 other VoIP provider regardless of the three or four
7 levels of potential ways of conducting their business
8 that they might choose, why they're a threat to —

9 A Let me just say, you're basically talking about marketing
10 issues and maybe looking at Time Warner is a good example.
11 Time Warner probably spends many, many times more than my
12 company's total net worth in advertising every year. They
13 have the ability to go out, to sell and to market on a
14 much stronger basis than a small company would.

15 Again, that's one of the distinctions I've made here.
16 Customers buy based on perception. Cell phones, for
17 instance have nothing near the quality of service as
18 voice line phones but customers have come to accept that
19 and that's just part of the price they pay.

20 Our concern is, again, is that while, yes, we have
21 certain advantages along those lines, those advantages
22 also cost money. They cost our service in some cases to
23 maybe be a little bit more expensive as well. We certainly
24 would like to market and play to those. Can we market to
25 the same extent as Time Warner? Well, obviously not. So,

1 that's part of the issue I think that we're dealing with,
2 is just the sheer market size, and we're not dealing with
3 some small start-up company that is also coming into our
4 home territory; we're dealing with a large conglomerate,
5 national player, that's trying to come in and not into
6 all of my area, but again, only the most populated
7 services of my area and compete.

8 I don't think that's really a very level playing
9 field, and I don't think that it's even a level marketing
10 field, when you get down to it.

11 Q Thank you.

12 CHAIRMAN MITCHELL: Any other questions?

13 Mr. Bowen?

14 MR. BOWEN: No questions, thank you,
15 Mr. Chairman.

16 CHAIRMAN MITCHELL: At this time I'm
17 going to ask Mr. Melchers if he would go
18 over the exhibits. I want to make sure
19 we're all on the same page as we have
20 listed here.

21 MR. MELCHERS: Thank you, Mr.
22 Chairman.

23 We have seven exhibits listed:

24 Exhibit #1 is reserved for a late-
25 filed exhibit from Time Warner showing the
26 competitive effects on rates as requested

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by Commissioner Clyburn.

Exhibit #2 is a picture of Mr. Bowen's drawing on the board.

Exhibit #3 is a list of SCTC's companies which is labeled exhibit A to Mr. Staurulakis' prefiled testimony.

Exhibit #4 is a Stipulation regarding Docket No. 2003-361-C.

Exhibit #5 is Order No. 2002-166 regarding PBT Communications' expansion into ALLTEL territory.

Exhibit #6 is a collection of Home Telephone Company webpages, 13 in number.

Exhibit #7 is a collection of PBT web pages that are 18 in number.

CHAIRMAN MITCHELL: Thank you, sir.

Any questions about those?

[No Response]

CHAIRMAN MITCHELL: Do we have anything further at this time?

MR. ELLERBE: Nothing from the Applicant, Mr. Chairman.

CHAIRMAN MITCHELL: Thank you, sir. Mr. Bowen, anything further?

MR. BOWEN: No, sir.

CHAIRMAN MITCHELL: Mr. Mustian?

MR. MUSTIAN: No, sir.

CHAIRMAN MITCHELL: We'd like to request at this time that Proposed Orders

1 be in the Commission's office no later
2 than Friday, May 6, at 4:45 p.m.

3 Hearing nothing further at this time,
4 we'll adjourn this hearing.

5
6 [WHEREUPON, at approximately
7 4:55 p.m., on March 31, 2005, the Hearing
8 was adjourned — proposed Orders due May 6,
9 2005, @ 4:45 p.m.]

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11
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